
United States Court of Appeals
for the
Third Circuit

Case No. 00-3519

800 SERVICES INC., a New Jersey corporation,

Appellant,

— against —

AT&T CORP., a New York corporation.

APPEAL FROM AN ORDER ENTERED IN THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY,
NEWARK AT NO. 98-1539 (NHP)

BRIEF AND APPENDIX VOLUME I
ON BEHALF OF APPELLANT

LAW OFFICES OF LAWRENCE S. COVEN
Attorneys for Appellant
314 U.S. Highway 22 West, Suite E
Green Brook, New Jersey 08812
(732) 424-1000

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STATEMENT OF RELATED CASES

Neither this nor any related case has ever been before this or any other court or agency.

JURISDICTIONAL STATEMENT

The district court had subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1332. A final order dismissed the complaint on August 28, 2000. [A25] A final judgment on the counterclaim was entered on September 18, 2000. [A28] The Notice of Appeal was filed on October 13, 2000. [A29] This court has jurisdiction under 28 U.S.C. 1291.

STATEMENT OF ISSUES AND STANDARD OF REVIEW

1. Did the trial judge err in ruling that the statute of limitations barred the Communications Act claims without properly considering the continuing violation doctrine? Issue raised by motion, December 20, 1999. [A93] Issue ruled on, August 28, 2000. [A445] Standard of review: plenary. Jones v. Morton, 195 F.3d 153 (3d Cir. 1999).

2. Did the trial judge err in ruling that the state claims of slander and libel were time-barred where the six-year statute of limitations for trade libel was applicable?

Issue raised by motion, December 20, 1999. [A93] Issue ruled on, August 28, 2000.

[A445] Standard of review: plenary. Jones v. Morton, 195 F.3d 153 (3d Cir. 1999).

3. Did the trial judge err in dismissing the state claims of unjust enrichment, intentional interference with prospective economic advantage, intentional interference with contractual relations, and trade libel/unfair competition, as unsupported by the evidence? Issues raised by motion, December 20, 1999. [A93] Issues ruled on, August 28, 2000. [A445] Standard of review: plenary. Scotts African Union Methodist Protestant Church v. Conference of African Union First Colored Protestant Methodist Church, 98 F.3d 78 (3d Cir. 1996), cert. denied 117 S.Ct. 688, 136 L.Ed.2d 612.

4. Did the trial judge err in ruling that the counterclaim for unpaid usage charges and shortfall charges was valid under the applicable tariff without considering the wrongful conduct of AT&T? Issue raised by motion, December 20, 1999. [A93]

Issue ruled on, August 28, 2000. [A445] Standard of review: plenary for question of law. See Jewelcor, Inc. v. Asian Commercial Co., Ltd., 11 F.3d 394 (3d Cir. 1993).

Standard of review: abuse of discretion for award of damages. See Kudelski v. Sullivan, 30 F.3d 399 (3d Cir. 1994).

STATEMENT OF THE CASE

800 Services is an aggregator of toll-free telephone numbers. It entered into successive contracts with AT&T for high volume discount plans under the applicable FCC tariff. 800 Services would get customers for the toll-free numbers and then pool the customers' usages to meet the volume requirements. [A97] The business was flourishing. [A522 to A523] But shortly after entering into a three-year contract in August, 1994, the business began to decline rapidly. [A267] The reason for the precipitous decline was that AT&T, through telemarketers, had begun targeting aggregator's customers to offer them lower rates than could be offered by 800 Services. [A38]

The telemarketers obtained data on 800 Services' customers from proprietary information in 800 Services' account with AT&T. [A500] AT&T employees confirmed that AT&T was targeting aggregators' customers through the proprietary information given to the telemarketers. [A355 to A360] The telemarketers would call an aggregator's number, thinking it was the number of an end user. Aggregators were getting 10-15 calls an hour from telemarketers. [A339, A344 to A345]

As it lost customers, 800 Services tried to restructure its plan and to merge it with another plan, but AT&T would not permit this, even though 800 Services met all the guidelines and the paperwork had been submitted on time. [A502]

The FCC tariff provided for shortfall charges if the aggregator failed to meet the minimum volume commitment, and for the passing on of the charges to end users if the aggregator did not pay the shortfall charges. To forestall the possibility of its customers being charged, 800 Services deleted the accounts of its customers. The deletions, which had to be done individually, were submitted on time before the cutoff date. But AT&T deliberately failed to delete them, and instead of charging 800 Services for the shortfall, charged the customers. When the customers called AT&T, the charges would be waived if the customer would sign up with AT&T direct. [A584 to A587] AT&T also failed to notify 800 Services when a customer was delinquent, often waiting several months to do so and then instead of pursuing the customer for collection, would simply take the payment from 800 Services. [A564 to A574] AT&T also failed to pay 800 Services the promotional money due for signing the 1994 contract. [A615 to A617]

AT&T told 800 Services' customers that if 800 Services did not pay its bill, the customer would be liable. [A271] AT&T also told 800 Services' customers that because 800 Services did not meet its requirement, the customer was liable for the penalty charge. [A300 to A302]

800 Services filed a complaint on April 6, 1998, alleging violations of the Communications Act as well as several state law violations. [A36] AT&T filed an answer and counterclaim for usage and shortfall charges on June 30, 1998. [A65] An

answer to the counterclaim was filed on July 21, 1998. [A86] On December 20, 1999, AT&T filed a motion for summary judgment. [A93] This motion was opposed by 800 Services. [A229] The motion was argued on February 2, 2000 and April 17, 2000 before the Honorable Nicholas H. Politan, U.S.D.J. On August 28, 2000, Judge Politan issued an opinion in which he dismissed the Communications Act claims as time-barred and dismissed the state claims as unsupported by the evidence. [A1] An Order granting summary judgment and dismissing the complaint was entered on August 28, 2000. [A25] A judgment on the counterclaim, in the amount of \$1,782,649.60 plus prejudgment interest, was entered on September 18, 2000. [A27] 800 Services filed a Notice of Appeal on October 13, 2000. [A29]

STATEMENT OF FACTS

AT&T is a long-distance telecommunications carrier subject to the provisions of the Communications Act, 47 U.S.C. 151 *et seq.* It provides telecommunications services pursuant to general tariffs as well as Contract tariffs that are negotiated with customers. [A96 to A97] 800 Services is a New Jersey corporation whose sole stockholder is Philip Okin. [A484; A488] It began doing business in 1990 as an "aggregator" of AT&T's 800 telecommunications services. [A465; A482; A490 to A491]

An "aggregator" subscribes to certain AT&T high volume discount plans under AT&T's FCC Tariff 2, and pools the usage of its customers in order to satisfy the minimum volume commitment of the AT&T service plan. [A97] 800 Services, as the "aggregator", becomes the "customer of record" for the 800 traffic, and its customers, whose usage was aggregated by 800 Services, are direct customers of 800 Services. [A97] 800 Services contracts with end users to place them in the discount program and these customers' 800 traffic volumes are used to meet the AT&T minimum volume commitment of 800 Services. AT&T maintained a list of the customers who contracted with 800 Services, along with account names and numbers. AT&T generated the billing invoices, which were sent to 800 Services's customers and which showed only AT&T's name and logo. 800 Services customers sent their

payments directly to AT&T. [A38]

800 Services entered into written contracts with AT&T for its "AT&T 800 Customer Specific Term Plan II", using AT&T Network Services Commitment Forms. The first contract was entered into on September 17, 1990 for 36 months with a net monthly minimum volume commitment of \$50,000. [A250] On May 28, 1993, a contract for 36 months at an annual minimum volume commitment of \$600,000 was signed. [A251] On June 30, 1993, a contract for 36 months at an annual minimum volume commitment of \$1,500,000 was signed. [A253] On November 29, 1993, a contract for 36 months with an annual minimum volume commitment of \$2,125,000 was signed. [A254] On August 24, 1994, 800 Services entered into a contract for 36 months with an annual minimum volume commitment of \$3,000,000. [A255]

AT&T's Solicitation of 800 Services' Customers

800 Services' business had been flourishing, with more accounts being added every month. Mr. Okin testified that from August through December 1993, 800 Services had a rate of growth of 10% of the whole business. [A522 to 523] But shortly after entering into the August, 1994 contract with AT&T, 800 Services' business began to decline precipitously. [A262] It was at this point that AT&T began to offer 800 Services' customers telephone usage rates that were lower than those offered by 800 Services. [A38]

Mr. Okin testified that shortly within a few months after signing the August,

1994 contract, his business, which had been developed over a five or six-year period, was getting stripped and he was losing customers at a rapid pace. Even though accounts were being added, the net result was a loss of a substantial amount of customers. [A498 to A499] Mr. Okin was told by Al Inga, another aggregator, that AT&T had been giving proprietary information on aggregators' accounts to a company in Florida called Transtech. [A500] AT&T had contracted with this company to call on all aggregated accounts, using proprietary lead lists of just aggregated accounts. [A504]

Christian Mehlenbacher, an account representative for 800 Services, testified that he had received feedback from 800 Services' customers that AT&T had offered them rates lower than 800 Services' rates. [A369 to A270] Other aggregators had similar complaints. [A272] Mr. Mehlenbacher testified that the customers were offered a larger rate reduction than 800 Services could give them. He indicated that when 800 Services would place a new account on the discount plan, within months AT&T would call on the account offering a better rate. AT&T was using 800 Services' proprietary information to solicit its customers. [A275 to A276]

Susan Rinaldi, another 800 Services employee, testified that when a monthly statement from AT&T would show accounts off the plan, the accounts would be called by 800 Services and asked if they went with a carrier other than AT&T. The answer was that the customer went to AT&T direct because AT&T said 800 Services could

not help them. [A291] She noted as an instance that a company called J.J. Valve was switched over to another plan and that someone from AT&T pitched them to switch from the aggregator to AT&T direct. [A292]

David Harbaugh, an AT&T district manager, managed "outbound telemarketing" for AT&T. [A407] He testified that American Transtech, located in Jacksonville, Florida, was a part of AT&T that performed outbound telemarketing. [A404 to A407] AT&T would send American Transtech leads through lists of customers who were with other carriers or who AT&T "thought were with us." The leads were developed by AT&T. [A405] Another group, called Direct Channels, called customers who were billed between \$200 and \$1,000 a month, both actual customers of AT&T and potential customers of AT&T. [A406] Mr. Harbaugh stated that "leads" are a set of customers that AT&T would call either to bring them back to AT&T or customers that were currently with AT&T that it would like to sell more to. [A406] He stated that there were about 1,400 telemarketers throughout the country working for his division of AT&T, working in companies other than American Transtech. These companies were EDS in Harrisburg, Pennsylvania, TCIM Services in Tulsa, Oklahoma, Ron Weber & Associates in Iowa, Choice Marketing in Los Angeles, and Teleservices Resources in Texas. It was Mr. Harbaugh's job to retain these companies to do outbound telemarketing for AT&T. [A407] Outbound telemarketers sold different plans, including toll-free numbers. [A408] Mr.

Harbaugh stated that some of the leads passed on to American Transtech were existing customers of AT&T. [A415]

Susan Magrino, a former AT&T employee, confirmed that American Transtech telemarketed exclusively for AT&T. She dealt directly with American Transtech and stated that prior to 1994, American Transtech was owned by AT&T. Ms. Magrino was responsible for telemarketing programs from AT&T to American Transtech and the other telemarketing centers. She hired the telemarketing staff, trained them, and then operationalized the program. [A384 to A387] She wrote the scripts used by the telemarketers. [A389] She stated that the aggregators' customers were AT&T customers. [A388 to A389] She testified that the lead lists would include existing AT&T customers in order to promote more phone usage. [A396 to A397]

Alfonse Inga was an aggregator in 1994. [A323] He was the largest aggregator of toll-free service in the country. [A329] He testified that 800 Services' end users were called by AT&T's wholly-owned subsidiary, American Transtech, who called all aggregators' end users, saying we know you're on an aggregator, we want you off and this is the offer we will give you. Every aggregator's customers were being called on a daily basis. [A330 to A333] Mr. Inga stated that AT&T would provide data to American Transtech on disk or on magnetic tape to use in predictive dialers, which would automatically call out. The data would include information about the aggregator and its end users. [A336 to A338] He noted that

the phone bills from American Transtech showed many many calls made directly to aggregators' phone numbers, including 800 Services' number, which the telemarketers thought was the phone number of the end user. [A339] Mr. Inga testified that his company would get 10 or 15 calls an hour from American Transtech and that the telemarketers thought the number was that of an end user. [A344 to A345] Mr. Inga indicated that within two years, every aggregator in the country was put out of business by AT&T. [A340] He stated that individuals at AT&T, including Susan Magrino, told him that AT&T gave the data to American Transtech and that AT&T got the data from the aggregators' accounts, despite the information being proprietary information. [A348 to A353]

Mr. Inga stated that he called Susan Magrino and asked about becoming a telemarketer and getting the same aggregators' lists as American Transtech. Ms. Magrino did not know that he was an aggregator. Ms. Magrino told him that the leads list was made up of accounts that are on aggregators and resellers that AT&T was going after. She told him that AT&T got the information from the people who handle aggregators and resellers and that AT&T was going after those accounts. Every account told to Mr. Inga by American Transtech was an existing AT&T account with an aggregator. [A355 to A360] Mr. Inga's companies and 800 Services had some of the same customers, so he knew that 800 Services' customers had been called by AT&T and switched to AT&T direct. [A377 to A378]

AT&T's Refusal to Restructure or Merge 800 Services

800 Services tried to restructure its existing plan but AT&T would not allow this. 800 Services tried to merge its plan to Contract Tariff 516, which would have been a bigger savings for the end users and a higher commission for 800 Services. The merger was to go through GE because GE had that tariff. The paperwork was sent and 800 Services was told that it met all the guidelines. But AT&T denied the merger. [A502] The merger was attempted through Combined Companies, Inc., owned by Larry Shipp. [A549; A698 to A699] The merger was denied by AT&T on July 25, 1995. [A575 to A576]

Mr. Inga testified that AT&T would not provision onto Contract Tariff 516 either his or 800 Services' customers. AT&T would not allow the transfer of accounts from one plan to the other. [A325 to A328] Mr. Inga testified that two companies were given Contract Tariff 516. [A375 to A376]

AT&T's Untimely Deletion of Accounts and Its Charging of Shortfalls to End Users

Under Tariff No. 2, the customer (800 Services) will incur shortfall charges if it does not meet the annual minimum volume commitment. [A122] If 800 Services incurs shortfall charges and does not pay them, its end user customers would be assessed the shortfall by AT&T. In an attempt to spare his customers from shortfall charges, Mr. Okin tried to delete the accounts. He even hired people to get it done

before the cutoff date because the whole plan could not be deleted at once and each account had to be deleted individually. The deletions had to be in by the fifteenth of the month. The deletions were in on time. AT&T, however, did not delete the accounts and instead of billing 800 Services for the shortfall, AT&T billed 800 Services' end user customers. When the end users called AT&T for an explanation, they would be told that the aggregator did not pay the bill and that if they did not use an aggregator but signed a three-year contract direct with AT&T, the charges would be taken off. [A584 to A587]

When Mr. Okin questioned Anna Nicoletti of AT&T about the shortfall charges being assessed to the deleted accounts, she told him that even though the deletions were submitted on time, AT&T did not get to do all it had to do in time so the customers did not get deleted and were hit with the shortfall. [A618 to A620] Everyone had been deleted from the plan and there should not have been any charges to the customers. [A622]

Mr. Mehlenbacher testified that 800 Services' customers told him that AT&T was volunteering to remove the charges if they would come back to AT&T or sign a term with AT&T. [A281]

Mr. Inga testified that AT&T automatically waived the charges for end users and then restructured the plans and signed the customers up for another three years. This was so common that AT&T had an acronym for it -- WAC, or waive all charges.

[A367 to A370] AT&T's account representatives would tell an end user that AT&T would waive the charges if they did not go with an aggregator. AT&T never waived any charges for any aggregator. [A371 to A373] Mr. Inga also testified that he was told by an AT&T employee that shortfall charges can only be put on an aggregator's master account number and cannot be put on an end user's account because the aggregator is AT&T's customer, not the end user. [A365]

In addition, AT&T failed to inform 800 Services about accounts that were delinquent, thereby making 800 Services responsible for the bad debt. AT&T would send 800 Services notices that a customer was six months past due and that AT&T could not collect from the customer so it would be taken from 800 Services. AT&T did not pursue collection of these accounts because they could just get the money from 800 Services. [A564 to A574]

AT&T's Failure to Pay Promotional Money to 800 Services

On May 19, 1994, Chris Mehlenbacher of 800 Services received a news flier from Anna Nicoletti of AT&T regarding one of AT&T's promotions under which 800 Services would receive promotional money for signing the Network Services Commitment at a larger minimum volume commitment. [A558 to A560] 800 Services entered into the contract for the larger minimum volume commitment, but it was never paid the back-end promo money of over \$100,000. [A615 to A617]

AT&T's Message to 800 Services Customers

Chris Mehlenbacher testified that when 800 Services' customers were being solicited by AT&T, AT&T would tell the customers that if 800 Services does not pay the bill, the customer would be liable for the bill individually. [A271]

Susan Rinaldi testified that she spoke to Vanessa at AT&T about 800 Services' customers getting the charges. She stated that Vanessa said that AT&T told the customers that because 800 Services did not meet its requirement, the customer was being charged back a penalty. [A300 to A302]

SUMMARY OF ARGUMENTS

The trial judge erred in ruling that 800 Services' claims under the Communications Act were barred by the two-year statute of limitations of 47 U.S.C. 415(b). The continuing wrong doctrine is applicable here because the wrongful conduct of AT&T in taking proprietary information belonging to 800 Services and in using it to solicit 800 Services' customers and switch them from 800 Services to AT&T direct, resulted in the continued unjust enrichment of AT&T.

The trial judge erred in dismissing the state law claims of 800 Services. All of the elements of each of the state law claims of unjust enrichment, intentional interference with prospective economic advantage, intentional interference with contractual relations, and trade libel/unfair competition were established by 800 Services. Furthermore, the trade libel statute of limitations of six years applied to the slander and libel claim,

The trial judge erred in granting AT&T's counterclaim and allowing AT&T to recover usage and shortfall charges. The trial judge improperly interpreted the tariff in light of AT&T's violation of the covenant of good faith and fair dealing, and he abused his discretion in allowing the recovery of the charges from 800 Services.

LEGAL ARGUMENT

POINT I

THE TRIAL JUDGE ERRED IN RULING THAT THE STATUTE OF LIMITATIONS BARRED THE CLAIMS UNDER THE COMMUNICATIONS ACT

The trial judge ruled that the claims of 800 Services under the Communications Act were time-barred, stating that the last "misdeed" by AT&T occurred no later than July, 1995. Since the complaint was filed on April 6, 1998, the trial judge concluded that the two-year limitations of 11 U.S.C. 415(b) applied to bar the complaint. [A15] The appellate review of a statute of limitations issue is plenary. Jones v. Morton, 195 F.3d 153 (3d Cir. 1999); In re Professional Insurance Management, 130 F.3d 1122 (3d Cir. 1997); Adams v. Trustees of New Jersey Brewery Employees' Pension Trust Fund, 29 F.3d 863 (3d Cir. 1994). The appellate review of a summary judgment motion is also plenary. Becton Dickinson and Co. v. Wolckenhauer, 215 F.3d 340 (3d Cir. 2000); Hawkins v. Leslie's Pool Mart, Inc., 184 F.3d 244 (3d Cir. 1999). The test on appellate review is the same as the test that must be applied by the district court -- to prevail on a motion for summary judgment, the moving party must establish that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law. Fed.R.Civ.Pr. 56(c). All evidence must be viewed in a light most favorable to the party opposing the motion. Matsushita Electric Industrial Co., Ltd.

v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S.Ct. 1348, 1356, 89 L.Ed.2d 538 (1986); Farrell v. Planters Lifesavers Co., 206 F.3d 271 (3d Cir. 2000). The non-moving party is to be given the benefit of all reasonable inferences. Foult v. Donjon Marine Co., Inc., 144 F.3d 252 (3d Cir. 1998). All doubts are to be resolved in favor of the non-moving party. Iberia Foods Corp. v. Romeo, 150 F.3d 298 (3d Cir. 1998).

The trial judge's ruling that the Communications Act claims were time-barred was incorrect because the "continuing wrong" doctrine should be applied here. Under this doctrine, "[i]n most federal causes of action, when a defendant's conduct is part of a continuing practice, an action is timely so long as the last act evidencing the continuing practice falls within the limitations period." Brenner v. Local 514, United Bhd. of Carpenters and Joiners of America, 927 F.2d 1283, 1295 (3d Cir. 1991); 287 Corporate Center Associates v. Township of Bedminster, 101 F.3d 320, 324 (3d Cir. 1996); Samerica Corp. of Delaware, Inc. v. City of Philadelphia, 142 F.3d 582, 598 (3d Cir. 1998). The focus is on the affirmative acts of the defendant. Brenner, *supra* at 1296.

In the case at bar, 800 Services argued that AT&T continues to be unjustly enriched because of its wrongful acts. The trial judge ruled that this did not qualify as an affirmative act. But the trial judge failed to appreciate the import of the wrongful conduct of AT&T that continued throughout the whole process and its effect

in unjustly enriching AT&T. First of all, there can be no doubt that AT&T intended to eliminate aggregators by forcing all of them, not just 800 Services, out of business, despite having entered into valid contracts with the aggregators. There was more than sufficient evidence to establish that this was the purpose of hiring firms such as American Transtech and giving them proprietary information from the aggregators about the aggregators' customers. AT&T employee Susan Magrino confirmed that AT&T was going after accounts of aggregators and resellers. She also confirmed that American Transtech was given proprietary information that AT&T got from the aggregators' accounts. AT&T employee David Harbaugh also confirmed that some of the leads passed on to American Transtech were existing customers of AT&T.

Mr. Inga, another aggregator, testified that his company received many many telephone calls from American Transtech telemarketers, who thought that they were talking with end users to make them a better offer to switch to AT&T direct. Since his company and 800 Services had many of the same customers, he also knew that American Transtech was calling 800 Services' customers to switch to AT&T. Mr. Inga went so far as to call AT&T employee Susan Magrino, who did not know he was an aggregator, and asked about becoming a telemarketer. Ms. Magrino confirmed to him that AT&T was using proprietary information obtained from aggregator's accounts and that AT&T was going after the aggregators.

800 Services's employees also confirmed that its customers were being targeted

by AT&T through American Transtech and the other telemarketers. Chris Mehlenbacher and Susan Rinaldi testified that their customers told them that they had been switched to AT&T because of a better rate.

This targeting of aggregators worked. Mr. Inga testified that within two years, there were no more aggregators. Mr. Okin testified that despite the fact that accounts were being added, the net result of the targeting by AT&T telemarketers was a precipitous and substantial loss of customers. When Mr. Okin tried to restructure or to merge his existing plan to Contract Tariff 516, AT&T would not allow him to do so despite the fact that 800 Services had met all the guidelines. But two other companies were permitted to merge into Contract Tariff 516. Again, this was a concerted effort on the part of AT&T to force 800 Services out of business.

But the final blow came with the deletions. Under Tariff No. 2, 800 Services, as AT&T's customer, would incur shortfall charges if it did not meet the annual minimum volume commitment, and if 800 Services does not pay the shortfall charges, AT&T assesses 800 Services' customers. In an attempt to keep his customers from being charged, Mr. Okin tried to take the permissible step of deleting all of the accounts. AT&T would not allow the whole plan to be deleted all at once, but required that each account had to be deleted individually. Mr. Okin hired staff specifically to delete each account individually in order to meet the cutoff date. This was accomplished and the deletions were sent to AT&T on time. However, AT&T

Services would have no customers for the communications services and would be forced out of business. The actions of AT&T violated 47 U.S.C. 201(b), which requires that all charges and practices "be just and reasonable" and provides that any charge or practice that is unjust and unreasonable is unlawful. The charges and practices of AT&T in intentionally forcing 800 Services out of business were clearly unjust and reasonable, and were therefore unlawful. The actions of AT&T violated 47 U.S.C. 202(a), which prohibits unjust and unreasonable discrimination in charges and practices, as well as undue or unreasonable preference or advantage to any particular person or class of persons. The intentional targeting of aggregators by AT&T was clearly unjust and unreasonable and amounted to an undue and unreasonable advantage to AT&T. The actions of AT&T violated 47 U.S.C. 203, which governs the violation of tariffs. Tariff No. 2 provides that shortfall charges are the responsibility, in the first instance, of the customer. The customer was 800 Services. Yet AT&T made no attempt to bill 800 Services for the shortfall charges. Instead, AT&T targeted 800 Services' customers, sending the shortfall charges to the end users. This clearly violated the tariff. (Of course, sending the shortfall charges to the customers of 800 Services was intentional, so that the when the customer called AT&T, the charges would be waived and the customer would be switched to AT&T direct.) In addition, AT&T violated the tariff when it failed to pay 800 Services the promotional money he was owed when he signed the Network Services Commitment

Form of August 24, 1994.

All of this was done by AT&T with the intent to cause 800 Services to become unable to meet the minimum volume commitment and thus to lose customers, to be charged shortfall charges, and to be put out of business. AT&T wrongfully caused 800 Services to incur these shortfall charges and continued to bill 800 Services for the shortfall charges long after July, 1995. The effects of AT&T's wrongful conduct, not only in wrongfully soliciting 800 Services' customers, but also in intentionally running 800 Services out of business, clearly continued right up to the filing of the complaint and beyond. Accordingly, the trial judge erred in finding that the continuing wrong doctrine was not applicable, and the ruling that the statute of limitations barred the Communications Act claims must be reversed.

POINT II

THE TRIAL JUDGE ERRED IN DISMISSING THE STATE CLAIMS OF 800 SERVICES

800 Services' state claims include unjust enrichment, intentional interference with prospective economic advantage, intentional interference with contractual relations, and trade libel/unfair competition, as well as slander and libel. The appellate review of state law claims is plenary. Scotts African Union Methodist Protestant Church v. Conference of African Union First Colored Methodist Protestant Church, 98 F.3d 78 (3d Cir. 1996), cert. denied, 117 S.Ct. 688, 136 L.Ed.2d 612. As noted in Point I, supra, the appellate review of a summary judgment motion is also plenary.

1. The Slander and Libel Claim

The trial judge held that the claim of slander and libel was time-barred under N.J.S.A. 2A:14-3, which provides that actions for libel or slander must be commenced within one year after publication of the alleged libel or slander. However, the allegations of slander and libel in the complaint are in essence allegations of trade libel. In Henry V. Vaccaro Construction Co. v. A.J. DePace, Inc., 137 N.J.Super. 512, 518, 598 A.2d 526 (App.Div. 1975), it was held that where the gist of the action is for damages to the plaintiff's business by virtue of the failure of others to deal or contract

with plaintiff, thereby affecting the plaintiff's business and right to earn a living, the action is one for trade libel and the one year statute of limitations for libel and slander does not apply. Instead, the six-year statute of limitations of N.J.S.A. 2A:14-1 applies. *See also* Crawford v. West Jersey Health Systems, 847 F.Supp. 1232 (D.N.J. 1994).

2. The Trade Libel/Unfair Competition Claim

Under New Jersey law, a claim of trade libel can be proven by demonstrating (1) publication, (2) with malice, (3) of false allegations concerning the property, product or business, and (4) special damages, e.g., pecuniary harm. New Jersey Automobile Insurance Plan v. Sciarra, 103 F.Supp.2d 388 (D.N.J. 1998); Lithuanian Commerce Corp., Ltd. v. Sara Lee Hosiery, 47 F.Supp. 523 (D.N.J. 1999). The tort of trade libel requires the publication or communication to a third person of false statements concerning the plaintiff, his property or his business. Henry V. Vaccaro Construction Co. v. A.J. DePace, Inc., *supra*; Federal Insurance Deposit Corp. v. Bathgate, 27 F.3d 850, 870 (3d Cir. 1994). Reckless disregard for or knowledge of the statement's falsity is an essential element of the tort of trade libel. Kass v. Great Coastal Express, Inc., 291 N.J.Super. 10, 24, 676 A.2d 1099 (App.Div. 1996), *aff'd* in part, *rev'd* in part, 152 N.J. 353, 704 A.2d 1293 (1998).

In the case at bar, there was ample evidence to support the claim of trade libel.

AT&T told the customers of 800 Services that 800 Services did not pay its bills and that the customers would be liable for those unpaid bills individually. AT&T told the customers of 800 Services that 800 Services was not meeting its obligations and that because of that, the customers were being charged a penalty. Essentially, AT&T told 800 Services' customers that 800 Services was irresponsible in its business affairs. These statements were false and AT&T knew they were false. The only reason 800 Services became unable to meet its obligations was because of the wrongful conduct of AT&T in making it impossible for 800 Services to meet its obligations by stealing its customers. Furthermore, AT&T knew that under the tariff, only 800 Services and not its customers was to be charged with the shortfall, so its statements that the shortfall was being charged to the customers because 800 Services had not met its obligations was not only false but was violative of the tariff. In addition, AT&T knew that the deletions made by 800 Services were submitted on time, and AT&T knew that it was its own foot-dragging that resulted in the deletions not being made. Clearly, the evidence and its inferences clearly showed that AT&T made knowingly false statement to third persons, with the intent and with the result of terminally damaging the business of 800 Services. Accordingly, the allegation of trade libel should not have been dismissed.

3. The Claim of Unjust Enrichment

Under New Jersey law, in order to establish a claim of unjust enrichment, the plaintiff must show that the defendant received a benefit from the plaintiff and that the retention of that benefit without payment would be unjust. It must be shown that remuneration was expected from the defendant and that the failure of remuneration enriched the defendant beyond its contractual rights. VRG Corp. v. GKN Realty Corp., 135 N.J. 539, 641 A.2d 519 (1994); New Jersey Turnpike Authority v. PPG Industries, Inc., 16 F.Supp.2d 460 (D.N.J. 1998), aff'd. 197 F.3d 96 (3d Cir. 1998).

The evidence submitted by 800 Services clearly shows that AT&T wrongly appropriated proprietary customer information from 800 Services' account, using that information to contact 800 Services' customers and switch them from 800 Services to AT&T direct. Without that proprietary information, AT&T would not have been able to switch the customers of 800 Services to AT&T direct. While there may have been no overt expectation of remuneration on the part of 800 Services because it did not know that the information had been appropriated by AT&T, there can be no doubt that the taking of the information conferred a benefit on AT&T beyond its contractual rights. Accordingly, the trial judge erred in dismissing the allegation of unjust enrichment.

4. The Claims of Intentional Interference with Prospective Economic Advantage and Intentional Interference with Contractual Relations

“An action for tortious interference with prospective business relation protects the right to pursue one’s business, calling or occupation free from undue influence or molestation.” It is the luring away by devious, improper and unrighteous means of the customer of another that is actionable. Printing Mart-Morristown v. Sharp Electronics Corp., 116 N.J. 739, 750, 563 A.2d 31 (1989). The elements of the claim are (1) a plaintiff’s existing or reasonable expectation of economic advantage or benefit, (2) a defendant’s knowledge of the plaintiff’s expectancy, (3) wrongful and intentional interference with that expectancy by the defendant, (4) a reasonable probability that the plaintiff would have received the anticipated economic advantage absent such interference, and (5) damages resulting from the defendant’s interference. Cooper Distributing Co., Inc. v. Amana Refrigeration, Inc., 63 F.3d 262, 281 (3d Cir. 1995); Lightning Lube, Inc. v. WitcoCorp., 4 F.3d 1153, 1167 (3d Cir. 1993); Pitvak v. Bell Atlantic Network Services, Inc., 928 F.Supp. 1354, 1369 (D.N.J. 1996).

There can be no doubt that these elements have been met. 800 Services had an existing contract with AT&T that had given it an economic benefit for several years and under which its business had been flourishing. AT&T knew of the contract and the economic benefit to 800 Services. AT&T wrongfully and intentionally interfered with the contract and economic benefit by taking proprietary customer information to solicit the customers into switching from 800 Services to AT&T direct. AT&T also wrongfully and intentionally interfered by telling the customers of 800 Services that

800 Services had failed to meet its commitment level and was the reason for the shortfall charges to the customers. Had AT&T not interfered, 800 Services would have continued to grow and would have received further economic advantage. The damages resulting from AT&T's interference are evident -- the precipitous loss of customers and the resulting total loss of business for 800 Services. Therefore, the dismissal of this claim was an error.

5. The Filed Tariff Doctrine is Inapplicable to
The State Claims

Under the filed tariff doctrine, claims concerning matters covered by the tariff are precluded. In AT&T v. Central Office Telephone, Inc., 524 U.S. 214, 118 S.Ct. 1956, 141 L.Ed.2d 222 (1998), a reseller of long-distance telephone services brought suit against AT&T alleging breach of contract and tortious interference with contractual relations arising from defects in AT&T's provisioning of services and billing for services. The reseller claimed that its contract with AT&T was not limited by the tariff but included "certain understandings" derived from AT&T's brochures and representatives. A jury found for the reseller and the court of appeals affirmed in part and reversed in part. The United States Supreme Court reversed, holding that because the reseller sought privileges other than those allowed in the tariff, the state law claims were barred by the filed rate doctrine. But in his concurring opinion, Chief

Justice Rehnquist explained that the filed rate doctrine preempts “only those suits that seek to alter the terms and conditions provided for in the tariff.” 524 U.S. at 229. He went on to state:

The tariff does not govern, however, the entirety of the relationship between the common carrier and its customers. For instance, it does not affect whatever duties state law might impose on petitioner to refrain from intentionally interfering with respondent’s relationships with its customers by means other than failing to honor unenforceable side agreements, or to refrain from engaging in slander and libel, or to satisfy other contractual obligations. The filed rate doctrine’s purpose is to ensure that the filed rates are the exclusive source of the terms and conditions by which the common carrier provides to its customers the services covered by the tariff. ***It does not serve as a shield against all actions based in state law.*** 514 U.S. at 230-231. [*Emphasis added*]

In the case at bar, there is no claim of “certain understandings” or “side agreements.” Instead, the claims here are similar to those in Cooperative Communications, Inc. v. AT&T Corp., 867 F.Supp. 1511 (D.Utah 1994), where an aggregator alleged that AT&T intentionally misrepresented to the aggregator’s clients the aggregator’s ability to provide the services it promised to provide, and that AT&T misappropriated confidential client billing information to use in an attempt to destroy the aggregator’s customer base. The court held that the filed rate doctrine did not act to bar the state claims. In MCI v. Graphnet, Inc., 881 F.Supp. 126 (D.N.J. 1995), the court noted that several courts have recognized that state causes of action may be

asserted in the interstate communications context as long as they are distinguishable from those created under the Communications Act, citing Cooperative Communications. The court went on to hold that the filed rate doctrine did not preclude breach of contract claims that did not directly implicate rates under the tariff.

Here, the state claims for trade libel has nothing to do with the tariff and is clearly not barred by the filed rate doctrine. Similarly, the state claims for unjust enrichment and intentional interference with contractual relations are not barred by the filed rate doctrine, since they are based on the wrongful conduct of AT&T in using 800 Services' proprietary information to solicit 800 Services' customers and switch them from 800 Services to AT&T direct. These claims have nothing to do with the tariff or any other agreement. Accordingly, the filed rate doctrine does not preclude the state law claims.

POINT III

THE TRIAL JUDGE ERRED IN RULING THAT THE COUNTERCLAIM OF AT&T FOR THE SHORTFALL CHARGES IS VALID

AT&T counterclaimed for the shortfall charges. The trial judge indicated that under the applicable tariff, 800 Services was obligated to pay all usage charges and

shortfall charges. Without citing to any cases, the trial judge stated that the “prevailing law entitled AT&T to judgment for” the unpaid usage charges and shortfall charges. This is clearly incorrect and must be reversed. The appellate review of a district court’s interpretation and application of law and federal acts is plenary. Jewelcor v. Asian Commercial Co., Ltd., 11 F.3d 394 (3d Cir. 1993); Madison v. Resources for Human Development, Inc., 233 F.3d 175 (3d Cir. 2000).; Kowalski v. L & F Products, 82 F3d 1283 (3d Cir. 1996). An appellate court will review a district court’s decision to award damages under a federal act under an abuse of discretion standard. Kudelski v. Sullivan, 30 F.3d 399 (3d Cir. 1999); Martin v. Cooper Electric Supply Co., 940 F.2d 896 (3d Cir. 1991).

As noted in Point II, section 4, AT&T intentionally interfered with the contractual relation and the prospective economic advantage. It was solely because of AT&T’s wrongful conduct that 800 Services was unable to meet its contractual requirements. It is axiomatic that “he who prevents a thing from being done may not avail himself of the non-performance which he himself has occasioned.” Keifhaber v. Yannelli, 9 N.J.Super. 139, 142, 75 A.2d 478 (App.Div. 1950). Thus, the commission by one party of certain torts, such as fraud, will excuse the performance of the other party. Great Falls Bank v. Pardo, 263 N.J.Super. 388, 395, 622 A.2d 1353 (Ch.Div. 1993), aff’d, 273 N.J.Super. 542, 642 A.2d 1037 (App.Div. 1994).

AT&T actively prevented 800 Services from meeting its minimum volume

commitment by using proprietary information to lure customers away from 800 Services. This resulted in the precipitous drop in the net number of customers and was the direct cause of 800 Services' being unable to meet its commitment. Thus, AT&T itself prevented 800 Services from performing its obligations under the contract. Therefore, AT&T cannot profit from that non-performance.

Additionally, AT&T violated the covenant of good faith and fair dealing that is implicit in every contract. Every contract in New Jersey contains an implied covenant of good faith and fair dealing. Black Horse Lane Associates, L.P. v. Dow Chemical Corp., 228 F.3d 275 (3d Cir. 2000); Pickett v. Lloyd's, 131 N.J. 457, 621 A.2d 445 (1993). This covenant prohibits each party to a contract from engaging in behavior that would thwart the other's rational expectations. Sterling National Mortgage Co., Inc. v. Mortgage Corner, Inc., 97 F.3d 39 (3d Cir. 1996). The covenant assures that neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract. Karo Marketing Corp., Inc. v. Playdrome America, 331 N.J.Super. 430, 752 A.2d 341 (App.Div. 2000), certif. denied 165 N.J. 603, 762 A.2d 217 (2000).

AT&T clearly violated the covenant of good faith and fair dealing. AT&T thwarted the rational expectations of 800 Services. AT&T not only injured the right of 800 Services to receive the fruits of the contract, AT&T also destroyed the right of 800 Services to receive the fruits of the contract. AT&T's wrongful conduct was the

direct cause of the failure of 800 Services to meet its obligations under the contract. AT&T should not have been permitted to profit from its own perfidy. Accordingly, the trial judge incorrectly interpreted the provisions of the tariff by not considering AT&T's wrongful conduct and in not applying the covenant of good faith and fair dealing, and the trial judge abused his discretion in awarding AT&T the usage and shortfall charges. Therefore, the Order directing entry of judgment on AT&T's counterclaim should be reversed.

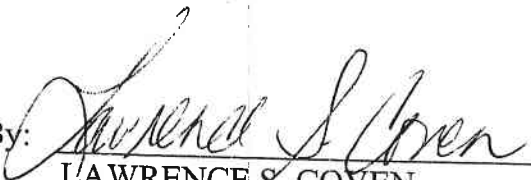
CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Orders of the District Court dismissing the complaint and entering judgment for AT&T on the counterclaim be reversed.

Respectfully submitted,

THE LAW OFFICES OF LAWRENCE S. COVEN
Attorneys for Plaintiff

By:


LAWRENCE S. COVEN
For the Firm

Dated: May 14, 2001

CERTIFICATION OF ADMISSION TO BAR

LAWRENCE S. COVEN, certifies as follows:

1. I am a member in good standing of the bar of the United States Court of Appeals for the Third Circuit.
2. Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing is true and correct.


LAWRENCE S. COVEN

Date: May 16, 2001

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 32(a)(7)(C) of the Federal Rules of Appellate Procedure, I certify that, according to the word-count feature of the Corel WordPerfect 8 word processing program, this brief contains 7,637 words and therefore is in compliance with the type-volume limitations set forth in Rule 32(a)(7)(B).


LAWRENCE S. COVEN

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Larry G. Shipp, Jr.

Denver, Colorado

November 23, 1999

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Case No. 98-1539(WHP)

DEPOSITION OF LARRY G. SHIPP, JR.
November 23, 1999

800 SERVICES, INC., a New Jersey corporation,
Plaintiff,
vs.

AT&T CORPORATION, a New York corporation,
Defendant.

APPEARANCES:

For the Plaintiff, appearing via telephone:
JOHN J. MURRAY, JR., ESQ.
314 U.S. Highway 22 West
Suite E
Green Brook, New Jersey 08812
(732) 424-1000

For the Defendant, appearing via telephone:
RICHARD BROWN, ESQ.
Pitney, Hardin, Kipp & Sauch LLP
200 Campus Drive
Florham Park, New Jersey 07932
(973) 966-8119

1 PURSUANT TO NOTICE AND SUBPOENA and the
2 Federal Rules of Civil Procedure, the above-entitled
3 deposition was taken by the Defendant at 370
4 Seventeenth Street, Suite 2500, Denver, Colorado, on
5 Tuesday, November 23, 1999, at 1:07 p.m., before Cecy
6 B. Orrico, Certified Shorthand Reporter and Notary
7 Public within Colorado, Court Reporting Office of
8 Mackereth Lombritto & Associates, Inc., 1776 Lincoln
9 Street, Suite 802, Denver, Colorado 80203.

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25

1 this case, only questions relevant to the claims
2 asserted 800 Services against AT&T, and any
3 counterclaims that are in this matter.

4 And while we were waiting to set up, I
5 advised Mr. Murray that you had sent a fax, I don't
6 think that he had received it, but he indicated to me
7 he was also going to be agreeable to ask questions
8 only about this matter.

9 MR. BROWN: Is that correct, Mr. Murray?

10 MR. MURRAY: That's correct.

11 Q (By Mr. Brown) Mr. Shipp, have you given
12 a deposition before?

13 A Yes.

14 Q I will dispense with the usual rules and
15 the usual instructions that I give witnesses. But
16 because this is a telephone deposition with you and
17 the court reporter in one location and Mr. Murray and
18 me in a third location, it's going to be very
19 important that we wait until somebody finishes
20 speaking and not interrupt one other. Do you
21 understand?

22 A I do understand. I also, by the way, have
23 requested a copy of the deposition from the -- would
24 that be provided by you or Mr. Murray or both?

25 Q No. We will provide that.

1 PROCEEDINGS
2 LARRY G. SHIPP, JR.,
3 having been first duly sworn, was examined and
4 testified as follows:

5 EXAMINATION

6 BY MR. BROWN:

7 Q Good afternoon, Mr. Shipp. Can you hear
8 me all right?

9 A Mr. Brown, excuse me for interrupting.
10 Are we going to go over any of the ground rules with
11 respect to this deposition?

12 Q Sure. I will be glad to do that.

13 A Sorry.

14 Q You are appearing pursuant to a subpoena
15 we issued in the case captioned 800 Services v. AT&T,
16 and we've scheduled the deposition for today. You
17 indicated to me in a fax -- both in a fax and orally
18 on the phone yesterday, that you were agreeing to
19 appear for this deposition, but you are willing to
20 answer only questions relating to this case and no
21 other case, and that's -- as I understand it, that's
22 a concern because Mr. Murray represents other clients
23 in a case in which you are involved; is that correct?

24 A That's correct.

25 Q So it's my intention to ask only about

1 A So that I can read it as to its accuracy.

2 Q Sure. I will be glad to provide you a
3 copy. I believe I have your address.

4 A Thank you.

5 Q Mr. Shipp, would you please describe
6 briefly your educational background and your work
7 history up until you entered the resale
8 telecommunications business?

9 A A brief description of my work history and
10 educational background, I went through high school in
11 West Texas, attended college in West Texas as well as
12 the Texas Tech University. I left college in 1996 --
13 excuse me, 1966, and enlisted in the United States
14 Air Force where I served for four years.

15 I have, since 1970, been involved in
16 broadcasting and telecommunications-related
17 businesses, both as an employee and as an owner/
18 operator of a small business in Southern Florida.

19 Most recently, since the closing of that
20 business, I have been involved in independent
21 consulting and have a primary client that I'm working
22 with presently in Dallas, Texas, in Internet-related
23 activities.

24 Q I understand that you were involved in the
25 broadcasting industry for a period of time. When did

AT&T
issued
subpoena

6

1 you first get involved in the telephone industry?

2 A In 1989.

3 Q And how did you become involved in the
4 telephone industry?

5 A I went to work for a company, a newly
6 formed company, that was starting business operations
7 in Seattle, Washington, by the name of MidCom
8 Communications.

9 Q How long did you stay with MidCom?

10 A A little bit longer than two years, maybe
11 closer to three years, two and a half years.

12 Q What did you do after you left MidCom?

13 A I went to work for a company called
14 Enterprise Telecom Services, ETS, and Union Telephone
15 Company in Blue Bell, Pennsylvania.

16 Q Was ETS, as far as you understand,
17 affiliated in any way with a company called TSE?

18 A It was affiliated, I'm not sure exactly
19 how.

20 Q Did you provide any services on behalf of
21 TSE?

22 A No.

23 Q How long were you with ETS?

24 A I was with ETS for a little bit also, a
25 little longer than two years. I left in 1994.

7

1 Q What did you do after you left in 1994?

2 A Myself and some other individuals
3 purchased a small telecommunications company in
4 Southern Florida by the name of Global Long Distance
5 Marketing.

6 Q Now, you were affiliated at some point
7 with a company called Combined Companies, Inc.; is
8 that correct?

9 A That's correct.

10 Q And Combined Companies, Inc., owned at
11 some point Global Long Distance Marketing?

12 A It was the legal entity formed to purchase
13 the assets of Global Long Distance Marketing.

14 Q What, in general, was the business of
15 Combined Companies, Inc.?

16 A Combined Companies, beyond its ownership
17 of Global?

18 Q Yes.

19 A It was in the business - its business
20 plan, essentially, called for it to bring together
21 small to medium-sized aggregators or - at that time
22 they were called - I think, commonly referred to
23 today as resellers of telecommunications services for
24 some mutual benefit.

25 Q Did CCI focus on inbound aggregators who

8

1 were aggregating inbound service?

2 A It had by opportunity, I suspect, a focus
3 there, because that represented most of its customer
4 base. But it was not its intention to necessarily
5 focus on either inbound or outbound, but, you know,
6 just communications services of both varieties.

7 Q Now, when you were with Combined
8 Companies, Inc., did you have any dealings with 800
9 Services, Inc., which is the plaintiff in this case?

10 A I had dealings with a company - I don't
11 recall the company's name being 800 Services, Inc.,
12 but I've seen documents that would suggest to me that
13 the company that I had dealings with may have been or
14 was affiliated with 800 Services, Inc.

15 Q Do you know a man named Phil O'Kin?

16 A Yes, I do.

17 Q When did you make his acquaintance?

18 A Shortly after purchasing the - after
19 Combined Companies, Inc., purchased the Global
20 companies, perhaps as early as in 1995.

21 Q What were the circumstances under which
22 you became acquainted with Mr. O'Kin?

23 A It's my recollection that my initial
24 meeting with Mr. O'Kin was as a result of being
25 introduced to him in a courtroom in New Jersey, but I

9

1 had heard of him and knew his name from my previous
2 experiences while an employee of ETS.

3 Q How was it that you had - how was it that
4 you heard of Mr. O'Kin while you were at ETS?

5 A That he was in the telecommunications
6 business.

7 Q Did you have any dealings with Mr. O'Kin
8 or his company while you were at ETS?

9 A No, I did not.

10 Q As far as you know, did ETS have any
11 dealings with Mr. O'Kin or his telecommunications
12 company at any time?

13 A Not to my knowledge.

14 Q So is it correct to say that you - while
15 you were at ETS, you heard about Mr. O'Kin because he
16 and/or his company was simply involved in the
17 telecommunications business?

18 A Yes.

19 Q Who was the individual that introduced you
20 to Mr. O'Kin in the courtroom in New Jersey in 1995?

21 A I believe it was Mr. Al Inga.

22 Q Did you have an understanding as to what
23 Mr. Inga's purpose was in introducing you and
24 Mr. O'Kin?

25 A No, I did not understand what his purpose

3 (Pages 6 to 9)

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1 was. I assumed that it was just a casual, friendly
2 introduction.

3 Q Did you have a subsequent meeting with
4 Mr. O'Kin?

5 A I had subsequent conversations with him.
6 I don't recall having any face-to-face meeting with
7 Mr. O'Kin beyond that time, but I did have subsequent
8 conversations with him.

9 Q When you met with Mr. O'Kin in New Jersey
10 in 1995, what was discussed at that meeting?

11 A I don't have any specific recollection. I
12 would only surmise it was small talk.

13 Q After you met Mr. O'Kin for the first
14 time, what was the substance of your conversations in
15 your next communications -- let me just rephrase the
16 question.

17 What substantively did you and Mr. O'Kin
18 talk about after you met in New Jersey in 1995?

19 A There came a time when we had
20 conversations -- as I had in my position with
21 Combined Companies to talk to a number of small to
22 medium-sized resellers -- I had an occasion to talk
23 to Mr. O'Kin regarding what he was doing in that
24 area.

25 Q What did he indicate to you he was doing?

11

1 A I don't have any specific recollection
2 of -- you know, of that conversation, other than to
3 say that we probably both talked about, you know, the
4 state of the business and how we were doing, because
5 I do recall having numerous conversations with
6 Mr. O'Kin about those kinds of matters.

7 Q Did Mr. O'Kin indicate to you what the
8 state of his business was in the conversations you
9 had with him after your meeting in New Jersey in
10 1995?

11 A He may have.

12 Q Do you recall what those were?

13 A No.

14 Q Was one of your purposes in speaking to
15 Mr. O'Kin an attempt to secure commitments from his
16 company to provide traffic or customers to Combined
17 Companies?

18 A Very possibly.

19 Q Do you know whether you, in fact, secured
20 any commitments from Mr. O'Kin?

21 A There came a time when we received orders
22 from Mr. O'Kin, yes.

23 Q When you say that you received orders,
24 were those orders for services?

25 A Those orders were to -- I don't know what

12

1 the proper word would be -- I guess enroll customers
2 of his within plans that we were a party to.

3 Q Were these plans that -- when you say, "We
4 were a party to," those were plans that CCI had?

5 A They were plans that CCI or Global were
6 able to place traffic to. They may or may not have
7 been plans that we specifically had ourselves. As a
8 matter of fact, it would be my recollection they were
9 not plans that were specifically owned or assigned to
10 CCI or Global.

11 Q Was it the case that Global was -- that
12 Global did not subscribe directly to any
13 telecommunications provider but instead placed its
14 traffic through GE?

15 A It did place traffic through GE, but it
16 also did have its own telecommunications plans to
17 which it was a subscriber.

18 Q Now, are you familiar with something known
19 as a contract tariff?

20 A I'm generally familiar with the term.

21 Q Are you familiar with contract tariff
22 Number 516?

23 A I've heard of that contract tariff, yes.

24 Q Did CCI have any customers that were -- or
25 Global -- did they have any customers that were on

13

1 contract tariff 516?

2 A I wouldn't know specifically, because
3 quite often a customer that we would submit to a
4 third party could be placed in a number of different
5 plans, and we often didn't know exactly where that --
6 where they would reside.

7 Q Sorry. Are you finished with your answer?

8 A Yes, I am.

9 Q Did Mr. O'Kin, as far as you know, ever
10 request that any of his traffic be placed on contract
11 tariff 516?

12 A I do not recall that specific request.

13 Q Did Mr. O'Kin request transfer of plans --
14 and I'm distinguishing here between actually
15 transferring accounts or locations as opposed to
16 transferring plans in themselves -- did Mr. O'Kin
17 ever request a transfer of plans from his company to
18 CCI or Global?

19 A Did he ever request that?

20 Q Yes.

21 A I don't recall that.

22 Q Did you ever request that he transfer
23 plans that he held or his company held to either CCI
24 or Global?

25 A We had conversations -- Mr. O'Kin and I

14

1 had conversations, as I had in my capacities with
2 CCI, numerous other conversations with other
3 telecommunications companies about the possibilities
4 that would exist from time to time for the
5 discontinuance of term plans.

6 So it is very possible, if not probable,
7 that I had such a conversation with Mr. O'Kin.

8 Q Do you know whether you – and I mean you
9 or your companies – and Mr. O'Kin, ever reached an
10 agreement by which 800 Services would transfer plans
11 to any of your companies?

12 A It is my recollection that we reached an
13 agreement whereby we would submit certain of his
14 plans or all of his plans – I wouldn't know exactly
15 and specifically which is correct – to other
16 companies.

17 Q When was that agreement reached?

18 A I don't have any recollection of the time
19 period, other than to surmise it was probably in late
20 1995 or early 1996, but it could have been another
21 completely different time. I don't remember.

22 Q Was that agreement reduced to writing?

23 A It might have been. There might have been
24 some communication as between myself and on behalf of
25 my companies to that effect. I don't recall.

15

1 Q Do you recall generally what the terms
2 were of the agreement that you had between your
3 company and Mr. O'Kin's company?

4 A No. I'm sorry, I do not.

5 Q Did Mr. O'Kin transfer plans or traffic
6 pursuant to that agreement?

7 A It is my recollection that there were
8 plans and traffic transferred.

9 Q Did you ever advise Mr. O'Kin that either
10 plans or traffic would not be able to be transferred
11 because of some refusal on the part of AT&T to accept
12 such transfers?

13 A I don't recall that. The things that I do
14 recall with regard to the disposition of those
15 transfers would have been me relaying to Mr. O'Kin
16 anything that that would have been provided by
17 whomever – any information would have been provided
18 by whomever we had sent the plans to.

19 Q Do you recall what entity you sent these
20 transfer requests to?

21 A Well, there were several entities at the
22 time that were soliciting or indicating that they
23 would be interested in receiving plans. ETS was one
24 of them; I forget the company name, but the
25 individual that was principal owner was Gary

16

1 Carpenter.

2 Q Was that ATN?

3 A ATN, thank you very much. Tel-Save
4 Communications, where Mr. Dan Boslough was, and I
5 think there was maybe one other company, whose name
6 does not immediately come to mind, that was
7 indicating that they could or would be interested in
8 accepting plans for the purposes of aggregating the
9 customer base and discontinuing the plans.

10 Q Do you know whether any of Mr. O'Kin's or
11 800 Services' plans were delayed or refused to be
12 transferred because of something done or said by
13 AT&T?

14 A I don't remember specifically any instance
15 where I received any information to that effect.

16 Q Did you ever advise Mr. O'Kin that AT&T
17 would not allow 800 Services to transfer the whole
18 plan as opposed to the traffic plan?

19 A I'm not sure I understand that specific
20 distinction as it relates to your question. But my
21 answer would be that whatever information I was
22 provided – and I usually got some information
23 back – I provided to Mr. O'Kin.

24 Q Now, in this time period when you were
25 attempting to transfer plans to ETS, did you deal

17

1 directly with individuals at AT&T about issues
2 surrounding the transfer of these plans?

3 A I don't think so. But I'm not sure I'm
4 answering the question you are asking.

5 Q I guess my question is this: Whatever
6 information you received concerning whether these
7 plans, Mr. O'Kin's plans, were transferrable or
8 Mr. O'Kin's traffic was transferrable, is it the case
9 that you received such information from a company
10 other than AT&T?

11 A That would be correct.

12 Q And it would typically have been either
13 ETS, ATN, Tel-Save or the other company whose name
14 you can't recall right now?

15 A Or companies, but that is correct,
16 Mr. Brown.

17 Q Now, you indicated that you believe the
18 800 Services transferred plans and accounts pursuant
19 to an agreement that you had or your company had with
20 800 Services; is that right?

21 A That's correct.

22 Q Do you know what volume of accounts were
23 transferred?

24 A I don't remember.

25 Q Can you give an approximation? I mean, if

5 (Pages 14 to 17)

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18

1 the answer is no, then the answer is no.

2 A I don't remember as to the exact volume,
3 and I'd hate to guess.

4 Q That's fine.

5 Did you ever discuss with Mr. O'Kin the
6 possibility of deleting the accounts off of his -- in
7 other words, companies with existing plans with AT&T
8 and transferring the individual accounts to another
9 long distance provider?

10 A It's possible that I had such a
11 conversation, because there was a lot of discussion
12 swirling around amongst this group of aggregator
13 community that I've alluded to about such actions.

14 Q Now, would you describe, once the traffic
15 was transferred from Mr. O'Kin's company over to CCI
16 or Global, or even if they were a conduit, once that
17 process was in place, would you describe in general
18 what the relationship was between 800 Services or any
19 of Mr. O'Kin's other companies and your company?

20 A Cordial. Our relationship was cordial.
21 We were small businesses that were attempting to make
22 money in the telecommunications industry. And we
23 often, amongst this group that I referred to, talked
24 about strategies and substrategies and opportunities
25 that may exist that would help us, and we were always

20

1 name that we were dealing with, but it may have been,
2 so I apologize for not being able to -- it may very
3 well be 800 Services, Inc., but I do not have any
4 independent recollection that it is; and, in fact, I
5 think it might have been something else.

6 Q Earlier you referenced that you had
7 discussions -- I think you termed "general
8 discussions" -- within the community about strategies
9 such as you find in the telecommunications industry.

10 Do you recall any specific discussions you
11 had with Mr. O'Kin concerning strategy?

12 A Nothing specific, other than the ones that
13 would encompass those general thoughts that I put
14 forth.

15 Q Other than what you've already told me at
16 the meeting and in subsequent discussions, do you
17 recall the substance of any other discussions that
18 you had with Mr. O'Kin?

19 A Mr. Brown, I spoke to Mr. O'Kin,
20 certainly, regularly, I don't know if regularly was
21 every other week, every week, but it was certainly
22 more frequently than once a month. We had numerous
23 conversations about events that were going on at that
24 particular time.

25 My companies were involved in litigation.

19

1 looking for an opportunity to place traffic in ways
2 that would be beneficial to our companies.

3 I'm not certain as to whether or not we
4 ever entered into any formal relationship that would
5 go beyond anything other than him being an agent of
6 services that we may come to have in going forward,
7 and we would make those available to him on a
8 commission basis.

9 Q I guess that was my question, which was --
10 rather was: What was the business relationship in
11 terms of how the business worked? And I think you
12 answered the question. Was it the case that
13 Mr. O'Kin's company became, essentially, an agent for
14 Combined Companies?

15 A He became an agent for Combined Companies
16 and/or Global Long Distance Marketing, whichever it
17 was that had the plan or the opportunity to provide
18 the services. Yes.

19 Q Okay. And do you know whether, when he
20 was -- when his company was the agent that was -- the
21 company that was going under the name of 800
22 Services, Inc.?

23 A That was the thing I referred to earlier,
24 Mr. Brown. I'm not sure that I remember exactly, but
25 it did not seem -- that name doesn't seem to be the

21

1 We discussed -- to the extent the information wasn't
2 confidential, we discussed matters relating to that
3 litigation with Mr. O'Kin. We discussed our
4 families. I mean, I had lots of discussions with
5 Mr. O'Kin.

6 Q Do you recall any substantive discussions
7 in which Mr. O'Kin indicated to you what his strategy
8 was in terms of going forward in the tele-
9 communications industry?

10 A No. But I understood him to want to
11 remain in the telecommunications industry. And I
12 became aware, sometime during the course of our
13 discussions, that he was contemplating filing some
14 lawsuit with respect to matters related to his
15 dealings with AT&T.

16 Q What did he tell you about that?

17 A I don't recall the specific conversation,
18 other than that it was my understanding that AT&T had
19 approached him about some shortfall with respect to
20 certain plans that he did not feel that he owed, and
21 that he felt that AT&T had caused his business some
22 sort of problem.

23 Q Did he solicit your advice or opinion with
24 respect to the shortfall issue?

25 A I don't know that he solicited my advice

6 (Pages 18 to 21)

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1 or my opinion, but I'm certain that I probably
2 discussed with him my thoughts and feelings, many of
3 which were commonly known at the time, about what was
4 going on.

5 Q Now, do you recall what you told him?

6 A No, sir, I don't.

7 Q Now, Mr. O'Kin has alleged in this case
8 that he requested a transfer, his plans or his
9 traffic, to contract tariff 516, but that AT&T
10 refused to honor that transfer. Do you know anything
11 about that?

12 A No.

13 And I hesitated in my response, because
14 I'm trying to recollect what may have been - what
15 information may have been provided to me by one of
16 the - or some of the providers of services that we
17 might have sent the plans to as to what was the
18 disposition of the plans, but nothing is jumping out
19 at me.

20 Q Do you recall any application or request
21 by 800 Services to transfer traffic or plans that was
22 rejected or refused by AT&T?

23 A I don't know if I understand that question
24 or how to answer it.

25 Q The previous question focused with respect

24

1 aggregators. I think the name TransTech had been
2 mentioned as a company that was providing some sort
3 of services for AT&T - customer services for AT&T.
4 And it would be what comes to my mind, but I don't
5 have any clear -

6 Q Do you have any information - I mean to
7 say, it's been alleged by Mr. O'Kin or by 800
8 Services that American TransTech contacted some of
9 the 800 Services end-user customers. Do you have any
10 information as to that, whether that happened or not?

11 A No, but he may have told me that.

12 Q But other than what he may have told you,
13 do you have any information about whether any of his
14 customers contacted American TransTech?

15 A His customers?

16 Q Yes.

17 A I do not.

18 Q He has also alleged or 800 Services has
19 also alleged in this case that AT&T failed to delete
20 800 Services customers from their plan in a timely
21 manner. Do you have any information as to any
22 allegation - any information as to that allegation?

23 A I do have some knowledge of a delay that
24 my recollection was an unusual one. It related to
25 the placing of orders of traffic from our company to

23

1 to contract tariff 516 -

2 A Right.

3 Q - and I'm just wondering whether you have
4 any information of any request by 800 Services to
5 transfer traffic or plans, regardless of its ultimate
6 destination, that was refused or rejected by AT&T?

7 A I don't know that.

8 Q Now, do you have any information as to
9 whether any of 800 Services end-user customers
10 received allocation of shortfall charges on their
11 bills?

12 A There was a lot of that happening, because
13 it happened to my companies. I don't remember
14 whether or not that included Mr. O'Kin's companies or
15 not, or traffic, which I think is your question. I
16 don't know.

17 Q Okay. Are you aware of any - withdraw
18 that.

19 Have you ever heard of a company called
20 American TransTech?

21 A Yes.

22 Q And in what connection have you heard
23 about that company?

24 A In the context of the conversations that I
25 referred to earlier that was by and between

25

1 both ATN as well as to ETS. And I'm not sure, but it
2 would be possible that that would include Mr. O'Kin's
3 customers, or certain of Mr. O'Kin's customers.

4 Q Well, would these customers, as far as you
5 know - I'm just talking generally, not just with
6 respect to Mr. O'Kin - but are these customers that
7 companies were seeking to delete off their plan and,
8 then, to be put on a plan held by either ATN or ETS?

9 A That's correct.

10 Q And do you know whether any - and when
11 you talk about the delay, how long was the delay in
12 your mind?

13 A It was a long delay, inasmuch as everyone
14 thought it was done and then it turned out it wasn't
15 done, kind of a delay. I don't know that I can
16 express that in terms of weeks, days, or months. But
17 it was an unusually long, or seemed to be an
18 unusually long period of time before we found out
19 that the customers had not been accepted, and they
20 had to be resubmitted.

21 Q And was the delay caused, in your view, by
22 AT&T or by ATN and ETS?

23 A It was my understanding, based on what I
24 was told, that it was a procedural delay, and that
25 the fault for the delay did reside with AT&T.

7 (Pages 22 to 25)

26

- 1 Q And from whom did you obtain this
2 information?
3 A From individuals at either ATN or at ETS.
4 Q And just to be clear, do you know whether
5 any of Mr. O'Kin's customers suffered such delay?
6 A Not specifically. I do not.
7 Q How was the delay for the customers that
8 you just talked about -- how was that delay resolved,
9 or how was the situation resolved?
10 A The procedure that -- the new procedure
11 required some additional paperwork, that paperwork
12 was obtained, the customers were resubmitted and they
13 were provisioned.
14 Q Now, did you ever speak to Mr. O'Kin about
15 whether or not 800 Services was experiencing a loss
16 of its customer base?
17 A I spoke to a number of companies about
18 that subject, and so I would assume or I would
19 presume that Mr. O'Kin may have been one of those
20 that I spoke to about that subject.
21 Q Do you recall any specifics about what was
22 discussed with Mr. O'Kin in that regard?
23 A Unique to him?
24 Q Yes.
25 A No, sir.

27

- 1 Q Did you speak with anybody else --
2 withdrawn.
3 Who else at 800 Services, other than
4 Mr. O'Kin, did you have communications with?
5 A I don't recall having communication with
6 anyone other than him, but others within my company
7 may have.
8 Q Do you know someone named Chris
9 Mehlenbacher?
10 A Yes. I did speak to her, I'm sorry.
11 Q I believe it's a him.
12 A Is it a him?
13 Q I believe it's a him.
14 A Okay.
15 Q Well, do you recognize that name?
16 A I do recognize that name; I'm embarrassed
17 if I misidentified the gender. But yes, I do
18 recognize the name.
19 Q Did you recognize it as a colleague of
20 Mr. O'Kin's?
21 A Not specifically.
22 Q What about the name, Susan Rinaldi?
23 A Yes.
24 Q You recognize that name?
25 A Yes.

28

- 1 Q Do you recognize her as a colleague of
2 Mr. O'Kin's?
3 A Yes.
4 Q Do you recall the substance of any
5 discussions you had with Ms. Rinaldi?
6 A Ms. Rinaldi, it is my recollection, was
7 the person within Mr. O'Kin's organization that quite
8 often interfaced with individuals within my
9 organization, but from time to time I would speak to
10 Ms. Rinaldi, and I don't recall any specific reason
11 as to why.
12 Q I presume from your answer that you don't
13 recall the substance of any specific discussion you
14 had with Mr. Rinaldi?
15 A No, but I know I did talk to her.
16 Q How about your discussions with
17 Mr. Mehlenbacher? Do you recall the specifics of any
18 of those discussions?
19 A Less so, and I think I might have confused
20 Mr. Mehlenbacher with Ms. Rinaldi. I have less
21 recollection of Mr. Mehlenbacher than I do of
22 conversations with Ms. Rinaldi.
23 Q Now, it's been alleged by 800 Services in
24 this case that AT&T personnel made libelous and false
25 remarks about 800 Services. Do you know anything

29

- 1 about that -- to 800 Services customers. Do you know
2 anything about that?
3 A About the specifics of that statement, no.
4 Q Do you know whether -- did Mr. O'Kin ever
5 indicate to you that any of his customers received a
6 telephone call or a letter from AT&T in which it
7 criticized 800 Services or the manner in which it was
8 being run?
9 A He may have. It is my recollection that
10 as it relates to the general feeling, that AT&T had
11 issued or said disparaging things about resellers.
12 That was a perception that I heard, and I heard that
13 from more than one individual, and it could have
14 included Mr. O'Kin.
15 Q Do you have any information as to whether
16 any of Mr. O'Kin's customers actually received
17 disparaging remarks about 800 Services from AT&T?
18 A No.
19 Q Now, did there come a point in time when
20 Mr. O'Kin or Mr. O'Kin's company, whatever it was
21 doing business under at the time, and your company
22 ceased doing business?
23 A Yes.
24 Q When was that?
25 A It is my recollection that the traffic

30

1 associated with Mr. O'Kin's customers began to wane,
2 was moved, or reprovisioned elsewhere. My companies
3 were in the process of winding down their business
4 operations, and our business relationship began to
5 diminish as a result of lack of traffic, and our
6 ability — our inability to continue to provision
7 traffic, and it just naturally came to a conclusion.
8 And I don't recall exactly as to the exact date; but
9 it was over a period of time.

10 Q It's also been alleged in this case by 800
11 Services that AT&T misused it's confidential
12 information in order to solicit its Internet services
13 customers. Do you have any information about that
14 allegation?

15 A Only to say, Mr. Brown, that I have heard
16 that comment and statement before as it related to
17 CP&I information, and that dates back to my days at
18 MidCom Communications.

19 Q But with respect to whether any of 800
20 Services' customers were targeted using CP&I, do you
21 have any information with respect to that?

22 A I do not know that.

23 Q Other than the one meeting that you
24 referred to earlier, have you ever met with Mr. O'Kin
25 since then?

31

1 A I might have. I don't recall doing so.

2 Q Okay. Have you met with any other
3 representatives of 800 Services, other than
4 Mr. O'Kin?

5 A I don't believe so.

6 Q Did you discuss this case, Mr. O'Kin's
7 case, that is, with Mr. O'Kin at any time? Other
8 than what you told me that he had indicated that he
9 was interested in suing AT&T, have you discussed the
10 specifics of this case with Mr. O'Kin at any other
11 time?

12 A No, sir. I have not.

13 Q Have you discussed the specifics of this
14 case with anyone else, other than Mr. O'Kin?

15 A I discussed —

16 Q Maybe I'll exclude — I'll say any
17 conversations you had with either —

18 A Attorneys, is all.

19 Q — with your attorneys or people you
20 expected to be your attorneys?

21 A That's correct.

22 Q Other than what you told me about your
23 conversation with Mr. O'Kin, you haven't discussed
24 this case with anybody other than your attorneys?

25 A That's correct.

32

1 MR. BROWN: I'll ask the court reporter —
2 I faxed some exhibits; I presume you got them?

3 THE REPORTER: Yes, I did.

4 THE WITNESS: I have not looked at them,
5 but they are here.

6 MR. BROWN: I'll ask the court reporter to
7 mark — and they should be in order. Now, the first
8 page is a 1995 letter to Larry Shipp from a Kevin
9 McDonnell. I would ask if you would mark that as
10 Shipp 1 — and it's a one-page letter — and put that
11 in front of the witness when you are done. Thank
12 you.

13 (Deposition Exhibit 1 was
14 marked for identification.)

15 Q (By Mr. Brown) Mr. Shipp, this is a
16 letter dated May 23, 1995, which the court reporter
17 has marked as Shipp 1. My first question is whether
18 you've seen this letter before?

19 A I'm reading it.

20 Q Fine. Take your time.

21 A Yes.

22 Q Now, do you know whether you transmitted
23 this letter to Mr. O'Kin or somebody else at 800
24 Services?

25 A Very possibly. Because this is within the

33

1 time parameters, and it is one of the companies to
2 which we had submitted both traffic and plans. And
3 it was our practice to, normally, unless the letter
4 was marked "confidential" — to provide information
5 back to the company that had submitted the plans.

6 Q But do you know, by looking at this
7 letter, whether this letter refers to TSAs submitted
8 for 800 Services?

9 A Would you ask that —

10 Q Sure, I'll ask the question again. In
11 looking at this letter, can you determine whether or
12 not the TSAs referred to in this letter are TSAs —
13 either in whole or in part, TSAs that were submitted
14 on behalf of 800 Services?

15 A I can't determine it from the letter.

16 Q Do you know, independent of the letter,
17 whether you submitted TSAs to GE or — I believe it's
18 the New Enterprise Wholesale Services, on behalf of
19 800 Services?

20 A It would be my recollection that they were
21 one of the companies that we would have submitted
22 TSAs to on behalf of Mr. O'Kin or any other company
23 to whom we had gotten traffic or TSAs from.

24 Q Do you recall what the disposition of
25 those TSAs were?

9 (Pages 30 to 33)

34

1 A Some were -- and I assume the question may
2 be -- I shouldn't assume.

3 Q Sure.

4 A Let me ask: Are you referring to the
5 disposition of the TSAs as it relates to GE or in
6 general?

7 Q Well, let me ask it differently: You have
8 indicated in your answer, previous answer, that you
9 would have submitted -- you believe you would have
10 submitted TSAs on behalf of 800 Services. Let me
11 ask, first: Do you recall actually having done that,
12 that your company submitted TSAs on behalf of 800
13 Services?

14 A It's my recollection that we did.

15 Q And do you know to what company you
16 submitted those TSAs?

17 A It would be to one of either the GE/NEWS,
18 which is what I referred to earlier as ETS --

19 Q Right.

20 A -- to ATN, or Mr. Carpenter's company, to
21 Tel-Save or to another company or companies, which I
22 can't recall. But I don't have any specific
23 recollection, and there were a number of TSAs beyond
24 those associated with Mr. O'Kin that got submitted.

25 Q And do you recall what the disposition of

1 those TSAs were not accepted?

2 A I don't recall.

3 Q Now, having seen Shipp 1, does it refresh
4 your recollection at all with respect to any
5 information -- I will withdraw.

6 MR. BROWN: Let me go into the next
7 exhibit here. Madam Court Reporter, there should be
8 an exhibit -- the following exhibit should be a
9 Letter of Agency, should be a single-page document,
10 with the number at the bottom, 63 -- 800 Services
11 00063. Do you see that?

12 THE REPORTER: Just a minute, please.
13 (Deposition Number 2 was
14 marked for identification.)

15 Q (By Mr. Brown) Mr. Shipp, before you, is
16 Shipp 2. Do you recognize, not this specific
17 document, but the form of this document?

18 A Yes.

19 Q What is it?

20 A It appears to be the piece of paper that
21 was required by either ATN or ETS or Tel-Save of us
22 in order to enroll a customer into a specific account
23 or plan.

24 Q And, typically, in order to have a
25 customer appoint CCI as the interim service provider,

35

1 the TSAs that were submitted on behalf of Mr. O'Kin's
2 company were?

3 A It's my recollection that his TSAs were
4 among those that were not accepted.

5 Q And do you have an understanding as to --
6 well, which of the companies did not accept the TSAs?

7 A I'm not sure that I recall. I would be --
8 I'm sorry.

9 Q Okay. Is it your understanding that the
10 decision to accept or reject the TSAs was a decision
11 of the three or four companies that you mentioned, or
12 was it the decision of somebody else?

13 A Mr. Brown, it was generally my
14 understanding from those times that companies often
15 would ask for more -- you know, obtain more TSAs and
16 plans than they could discontinue. So it was not
17 uncommon, necessarily, for sometimes the plans to not
18 be accepted in the first round, and then there would
19 be another opportunity perhaps down the road.
20 Sometimes they were rejected and we never knew why,
21 other times they were rejected, and if we were told
22 why, it was usually attributed to AT&T.

23 Q And do you know specifically with respect
24 to 800 -- and I'm talking about 800 Services here --
25 do you know specifically with 800 Services TSAs, why

1 you would need a signed Letter of Agency from that
2 customer, is that right?

3 A That's correct.

4 Q This is just an example of the type of
5 letter that you would receive in order to transfer a
6 customer onto one of the plans of one of the
7 companies that we just talked about, is that right?

8 A That's correct.

9 MR. BROWN: Madam Reporter, would you look
10 at the -- there should be a document, and now this is
11 a multipage document from 00643 through 047.

12 (Deposition Exhibit 3 was
13 marked for identification.)

14 Q (By Mr. Brown) Mr. Shipp, I will ask you
15 to just identify this document for the record, if you
16 would, please, once you've had a chance to look at
17 it?

18 A Okay.

19 Q Can you identify the document? I realize
20 it's different pages, but can you identified the
21 document for the record?

22 A What I see before me is what appears to be
23 a commission settlement statement for the period
24 ending June 30, 1996, with an accompanying --
25 accompanying it is an unrelated or related to it, but

36

37

38

1 not a statement, a facsimile from a company called
2 Telcom Services Consulting to an individual at CCI by
3 the name of Barry Martin.

4 A check reflecting what appeared to be the
5 amount of the commission owed or a period to be owed
6 from the commission statement earlier referenced, and
7 then a list of accounts -- two pages of which are a
8 list of accounts.

9 Q And Global, in the first page -- the
10 Global Long Distance Marketing, is your company that
11 we've spoken about; is that right?

12 A CCI d/b/a GLDM, that's correct.

13 Q And do you recognize the company, Telcom
14 Services Consulting?

15 A That was the company I was referring to
16 earlier.

17 Q When you said you were referring to
18 earlier, is that a company that you associate with
19 Mr. O'Kin?

20 A Yes.

21 Q And do you know whether at the same time
22 800 Services was in business as -- let me withdraw
23 the question.

24 Did you ever provide these types of
25 commission settlements to 800 Services, Inc.?

40

1 A This is about the time that I was
2 referring to earlier wherein CCI and Global had
3 effectively already wound up its affairs, but it was
4 certainly in the process of closing --

5 Q Okay.

6 A -- or had already closed.

7 Q Mr. Shipp, it's been alleged by 800
8 Services in this case that it lost customers as a
9 result of actions or inactions by AT&T. Are you
10 aware of any customers of 800 Services that left 800
11 Services because of something done by AT&T?

12 A I am aware that -- I had conversations, or
13 individuals within my company had conversations and
14 referred them to me that from report to report there
15 were customers that would not be accounted for, and
16 the complaint was that those customers had been
17 inappropriately misplaced, lost, or otherwise
18 disappeared from the commission reports.

19 That was a common complaint. I do not
20 recall whether that complaint was unique to
21 Mr. O'Kin, and I don't believe that it was.

22 Q Do you recall that as a complaint from
23 Mr. O'Kin's company?

24 A I would assume -- no, I don't. I have no
25 reason to believe that it wasn't.

39

1 A Not to my recollection or knowledge.

2 Q Let's look at the last document, which
3 should be a two-pager, one is a January 14 letter,
4 the next one is a January 21 letter. We will mark it
5 as Shipp 4, when the court reporter finds it and puts
6 a sticker on it.

7 (Deposition Exhibit 4 was
8 marked for identification.)

9 Q (By Mr. Brown) Mr. Shipp, when you've
10 had a chance to look at that, if you could identify
11 these for the record, please.

12 A This appears to be a letter written to me,
13 Larry Shipp, at Global Long Distance Marketing, from
14 GE Capital, and it deals with a settlement statement
15 for the period ending December 31, 1997. And then
16 there is a facsimile or a letter facsimile dated
17 January the 21st, 1998, which appears to be written
18 from me to Phil O'Kin.

19 Q Do you recall writing this second page?

20 A I'm reading it.

21 Q Sure.

22 A Yes, I remember those.

23 Q And was this about the time when Global
24 Long Distance Marketing and CCI was winding up its
25 affairs?

41

1 Q Let me ask this: These reports that you
2 indicated that you received, when did you receive
3 those reports?

4 A Monthly, usually. Always after the month
5 of a billing cycle, so it was always old information.

6 Q And the allegation that would be reported
7 by your agents would be that certain customers had
8 dropped off the reports?

9 A Yes.

10 Q And these agents would suggest that they
11 were -- that they fell off the reports, because of
12 some conduct by AT&T?

13 A I heard that specific complaint.

14 Q Now, what was the specific complaint about
15 what AT&T did?

16 A They would have signed them up for
17 something else; they would have rejected or lost it.
18 I mean, Mr. Brown, I heard a number of things during
19 those times that related to all sorts of things, and
20 I don't know that I can recount to you each and every
21 one of them.

22 Q But you recall that 800 Services made such
23 complaints?

24 A I do believe they did. I do not recall
25 specifically those complaints from them, but I do

11 (Pages 38 to 41)

42

1 believe that they did. And the reason why I say that
2 I do believe that they did, is because they were a
3 customer of ours who tended to look after their sheep
4 and watch over their customers; and, therefore, if
5 there were something that they believed to be wrong,
6 we certainly heard about it.

7 Q Did you do anything to check out the
8 reports that you received from your agents, to
9 determine whether they were accurate or not with
10 respect to AT&T's conduct?

11 A My company certainly would and did. And I
12 say "my company" to distinguish myself, the
13 individual, because I often was not the person who
14 was making those phone calls. But when I did on a
15 customer's behalf, I would call up and try to
16 determine what had happened from the company to which
17 we had a relationship -- a customer relationship
18 with.

19 Q Do you recall doing that -- do you recall
20 personally doing that for any of 800 Services
21 customers?

22 A No.

23 Q Do you know whether anybody at your
24 company did that for any of the 800 Services
25 customers?

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1 traffic to, and I never heard that acknowledgement of
2 responsibility from AT&T themselves.

3 So I never got any admission from them
4 that they did such a thing, but I did hear that
5 continually from the companies to whom we submitted
6 the plans, and customers, that there were problems.

7 Q So that was GE and ATN and Tel-Save; is
8 that right?

9 A Yes, sir.

10 Q And, again, I'm trying to focus on 800
11 Services customers. Do you recall whether those
12 reports from those three entities -- GE, ATN, and
13 Tel-Save -- were received with respect to complaints
14 by 800 Services about its customers?

15 A I don't have any specific recollection at
16 this time of that.

17 Q Okay. Did you ever discuss with Mr. O'Kin
18 any -- withdrawn.

19 Did Mr. O'Kin ever indicate to you that he
20 had a plan to avoid paying the shortfall charges that
21 either were due and owing or were about to be due and
22 owing under his plans?

23 A That he had a plan?

24 Q Yeah.

25 A No. lie

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1 A I only believe they did.

2 Q Do you know the results of any
3 investigation done by anybody at your company on
4 behalf of 800 Services customers in response to those
5 reports?

6 A No. I'm left today with a memory that
7 some were resolved and that some weren't; some were
8 located and reappeared the month following, some
9 didn't. You know, I don't recall, today, ever
10 completely knowing or ever completely thinking I knew
11 what had really happened.

12 Q Are you aware of any conclusion reached by
13 either your company or someone else that some
14 misconduct on the part of AT&T was responsible for
15 these customers dropping off the monthly reports?

16 A Just perceptions.

17 Q Well, other than your perceptions, what
18 information do you have that it was misconduct by
19 AT&T that led to -- and I'm talking about 800
20 Services customers -- being left off of these
21 reports?

22 A The only way that I can answer that would
23 be to tell you that to the extent that there was ever,
24 a comment made to us that AT&T was responsible for
25 it, it was made by the party to whom we had sent the

45

1 Q Did he ever discuss a means or mechanism
2 to avoid paying the shortfall charges in the event
3 that they were assessed against his plans?

4 A No. I do not. But there was a commonly
5 held opinion that in certain instances the tariff
6 that governed these plans precluded any termination
7 penalty.

8 Q Do you know whether Mr. O'Kin --
9 whether -- withdrawn.

10 Did you have any discussions with
11 Mr. O'Kin about whether the tariff included such
12 assessments?

13 A For his plans?

14 Q Yes.

15 A I don't recall that. lie

16 Q Do you recall any problems that Mr. O'Kin
17 had in discontinuing his plans without liability
18 under the tariff?

19 A No more than the common perception that I
20 have or common recollection that I have about any and
21 all customers that we dealt with during that
22 particular period of time that that seemed to be a
23 common cry.

24 Q What was the common cry?

25 A That there were -- that the rules were

12 (Pages 42 to 45)

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1 changing, and that what could and was being allowed
 2 to happen yesterday wasn't happening today. It was
 3 just that kind of an undercurrent or a theme, if you
 4 will.

5 Q Do you recall Mr. O'Kin ever making such a
 6 complaint?

7 A No, not specifically. But again, I'm
 8 blurring him with a lot of others at this particular
 9 moment, so I can't say that he didn't.

10 Q Now, there's an allegation in 800
 11 Services' complaint that AT&T limited the
 12 availability of 800 numbers to 800 Services. Do you
 13 have any information on that allegation?

14 A I heard that.

15 Q You heard that AT&T limited the
 16 availability of 800 numbers to 800 Services?

17 A That it limited the availability of 800
 18 numbers.

19 Q But -

20 A And it may or may not specifically apply
 21 to 800 Services. I don't have any recollection of
 22 that.

23 Q Do you have any information as to whether
 24 any orders of 800 Services' were not filled because
 25 of the lack of availability of 800 numbers?

1 MR. MURRAY: I just have a few questions
 2 for you, Mr. Shipp, and we will get done with this
 3 shortly.

4 THE WITNESS: Thank you, sir.

5 EXAMINATION

6 BY MR. MURRAY:

7 Q We've used the term "traffic and plans"
 8 today. What is your understanding of the difference
 9 between traffic and plans, if there is, indeed, a
 10 difference?

11 A It would be my understanding, Mr. Murray,
 12 that traffic relates to the individual accumulative
 13 or aggregated customer base, in the long distance or
 14 inbound usage associated with those customers; that
 15 would be what I would refer to or I think was
 16 referred to and what I've been talking about this
 17 afternoon, when I say the word "traffic."

18 And when I mention "plans," I generally
 19 think of and talk about and I have been referring to
 20 myself, today, the legal obligation or the
 21 contractual or tariff arrangement between the
 22 subscribing customer or plan holder and the carrier.

23 Q Okay. We also talked about CCTs
 24 transferring of 800 Services plans to the three or
 25 four entities that you discussed earlier. Do you

1 A No.

2 Q Did Mr. O'Kin ever complain to you about
 3 not having access to contract tariff 516?

4 A I don't recall that complaint.

5 Q Did Mr. O'Kin ever complain to you about
 6 not having access to any contract tariff?

7 A When you say "access," do you mean that
 8 others had it and he didn't?

9 Q That he wished to get it, and that he was
 10 denied it, and he was complaining about the fact that
 11 he was not able to get it.

12 A That sounds familiar in terms of, again,
 13 another reoccurring complaint that was circulated
 14 amongst aggregators and resellers during this period
 15 of time. I'm not sure that I associate that, though,
 16 solely with Mr. O'Kin or even specifically to him.

17 Q Well, do you have any recollection of
 18 Mr. O'Kin himself - you know, regardless of what
 19 other aggregators or resellers said, do you have any
 20 recollection of Mr. O'Kin himself making such
 21 complaint?

22 A I can only say, no, I don't. I was going
 23 to say, he might have, but I don't.

24 MR. BROWN: I have no further questions.
 25 I believe Mr. Murray may have some questions.

1 know approximately when 800 Services first intended
 2 to transfer the plans to CCI and to the other
 3 entities? And I guess I'm looking for an approximate
 4 date.

5 A I would not have been able to answer that
 6 without at least referring to Exhibit 1 that was
 7 shown to me earlier, which was the letter from GE to
 8 me dated May 23, 1995. So it is my recollection,
 9 based on looking at this letter, that that would be
 10 approximately the time period, plus or minus a couple
 11 of months on either side.

12 Q Can you describe for me the compensation
 13 arrangement between 800 Services and CCI? How did
 14 each of you get paid pursuant to placing these plans
 15 through the three or four entities that you described
 16 earlier?

17 A CCI and/or Global Long Distance Marketing
 18 were paid pursuant to an agreement that it had, or
 19 they had, with the various service providers. And,
 20 typically, that agreement was a commission-based
 21 agreement - well, I shouldn't say "typically."

22 In every instance, it was a commission-
 23 based agreement, based on the traffic associated with
 24 us that would be in total represented and
 25 individually accounted for by our various agents,

1 which would include, in this case, 800 Services or
2 Telcom Services, as we knew them then.

3 Q And what --

4 A Excuse me, I didn't answer the second
5 part. And they would receive a commission which
6 would be a percentage of our commission.

7 Q Do you know what percentage 800 Services
8 would have received for any of the total revenue,
9 through the plan in place, of those entities?

10 A It would appear to be based on, looking at
11 Exhibit 3, that unless the amount was -- would vary,
12 that the commission was 20 percent of what we are
13 describing here as the gross revenue, which was
14 probably equal to a percentage of the commission.

15 In other words, although expressed as
16 gross revenue on this commission report, that 20
17 percent probably had an equivalent percentage related
18 to our commission that had been somehow translated.

19 Q The exhibit we are looking at, Number 3,
20 is that total of \$12,309.04 -- would that be payable
21 to Telcom Services or 800 Services?

22 A Yes. And I think, Mr. Murray, there was a
23 check in that exact amount from Global to Telcom
24 Services accompanying that exhibit.

25 Q You testified earlier that it was your

1 Were 800 Services plans rejected by these
2 entities, or were they accepted?

3 A It's my recollection that the plans
4 associated with 800 Services were not accepted.

5 Q Do you know the reasons for the
6 nonacceptance?

7 A I think I may have mentioned or testified
8 to this earlier. There were a number of things that
9 we were told; it usually revolved around, you either
10 missed the window, you were in late, we could only do
11 so many, or, in certain instances, that they didn't
12 meet the criteria of the company that had requested
13 the plan. There were various reasons why the plans
14 were or could have been not accepted.

15 Q Okay.

16 A If I may just amplify for just a moment.

17 Q Go ahead.

18 A What I found to be interesting is, when I
19 read the Exhibit 1, May 23, 1995, I found it the
20 least revealing to the extent that it says in -- and
21 I'm reading it now -- the second paragraph, which
22 says, "One way or the other, you will hear from us as
23 soon as we get the word from AT&T."

24 So I assume that, to the extent that this
25 letter referred to plans that potentially included

1 recollection that CCI or Global had attempted to
2 transfer 800 Services plans to GE; is that correct?

3 A That is my recollection. I testified, I
4 think, Mr. Murray, that it is likely that it was GE;
5 but I cannot say specifically, because there were
6 other customers or companies to whom we submitted
7 plans to. I think that was what I said.

8 Q Out of the entities that you had mentioned
9 earlier, could you tell me the name of the entity or
10 the name of the other entities which you attempted to
11 place in --

12 A Would you repeat it, please?

13 Q We had mentioned -- strike that. You had
14 testified earlier that, according to your
15 recollection, CCI had attempted to transfer 800
16 Services plans to GE; is that correct?

17 A I thought I clarified that my recollection
18 was that it might have been GE, but there were others
19 to whom we submitted plans -- ATN, Tel-Save, just two
20 of the companies -- and I'm not and do not have a
21 specific recollection as to whether 800 Services
22 plans went solely to GE or went to a variety -- or to
23 all of those companies.

24 Q You just answered my question, so I
25 appreciate that response.

1 Mr. O'Kin's company's plans, that we'd heard back --
2 some word back. I just don't recall as to what that
3 was.

4 Q When did CCI begin to place any resellers'
5 plans through these entities, and approximately what
6 year?

7 A 1994 -- late 1994, early 1995, and
8 throughout much of 1995, and I'm not sure whether
9 that extended into 1996; in fact, it would be my
10 recollection it did not.

11 Q Did the volume of requests that you
12 received from resellers to transfer plans to these
13 entities increase from 1994 to the end of your
14 business existing?

15 A Yes.

16 Q And can you tell me, in 1995, were the
17 requests greater than they were in 1994?

18 MR. BROWN: In the aggregate?

19 MR. MURRAY: In the aggregate.

20 A Yes.

21 Q (By Mr. Murray) Do you know why that is?

22 MR. BROWN: I'll object to the form.

23 You may answer.

24 A Who is it? I don't mean this to be
25 flippantly responded to, but it's sort of like Bob

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1 Dillon, the times that were changing. The climate
 2 for the acceptance of plans changed drastically
 3 between the early and late part of 1994 and through
 4 all of 1995 to where it was increasingly difficult
 5 for companies that were in the business of
 6 aggregating or reselling telecommunications services
 7 to make the kind of money they had been used to
 8 making. So consolidation or aggregating their plans
 9 with one another was a very appealing business
 10 solution.

11 Q (By Mr. Murray) You mentioned that there
 12 was difficulty. Do you know what was causing the
 13 difficulty?

14 MR. BROWN: I'll object to the form.

15 A There had been and there were changes,
 16 Mr. Murray, in tariff filings, the specifics of which
 17 I do not recall, but there were tariff filings that
 18 changed; there were rates that had been previously
 19 high on a retail level that AT&T was offering direct
 20 and were now lower.

21 Competition was greater. Deregulated
 22 entities, such as MCI, Sprint, WorldCom and others
 23 were increasingly becoming more competitive. I think
 24 the landscape was just different.

25 Q Okay. Did CCI have any of its own

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1 more specifically with the customers, that that was
 2 the case.

3 Q And in keeping in mind with my previous
 4 question, do you have any knowledge of CCI's
 5 customers within CCI's term plan -- strike that
 6 question.

7 What are TSAs?

8 A It is my understanding that TSA stands
 9 for -- you mean the definition of one?

10 Q Yes. What is your understanding?

11 A It is my understanding that TSA stands for
 12 Transfer Service Agreement.

13 Q Did CCI ever attempt to delete the
 14 customers which were within its term plan from AT&T?

15 A Did CCI --

16 MR. BROWN: Any customer?

17 MR. MURRAY: Any of its customers within
 18 its term plan.

19 A We processed adds and deletes all the
 20 time. I'm not sure that's what you are asking.

21 Q (By Mr. Murray) Yes. And I'll follow
 22 that up.

23 You had testified earlier that, from your
 24 recollection, there was some delay from AT&T in
 25 deleting other resellers customers from their plan.

55

1 customers that it was placing through to the entities
 2 that we had discussed earlier?

3 A Yes.

4 Q Did CCI ever get allocated shortfall
 5 charges for these customers from AT&T?

6 A For the customers that were -- that we
 7 successfully placed?

8 Q For CCI's own customers.

9 A That we were unable to place or that it
 10 elected to place but were within our own term plans?

11 Q Yes.

12 A Yes. I think -- did I answer you
 13 question?

14 Q Yes. You did.

15 A Okay.

16 Q Do you know if any of CCI's customers that
 17 were with CCI's own term plan were ever solicited by
 18 any means by AT&T?

19 A Mr. Murray, as I indicated earlier, it is
 20 my recollection that the complaints and the things
 21 that were going on that I referred to that might have
 22 affected 800 Services, as well as other of CCI
 23 customers, also affected CCI.

24 And I heard from individuals within CCI,
 25 who were involved in the customer relations or dealt

57

1 And I'm asking -- my question to you would be: Do
 2 you have any recollection of AT&T failing to delete
 3 or taking a long time to delete customers from CCI's
 4 own term plans?

5 MR. BROWN: I'll object to the form.

6 A If I may -- and I'm not sure this is the
 7 answer to the question, but let me attempt to answer
 8 it this way. It is not my recollection that CCI
 9 attempted to delete from its own plans any customers
 10 where it met that kind of a problem directly.

11 It is, however, my recollection that
 12 certain customers that were within term plans of CCI
 13 were attempted to move to other providers, and we met
 14 the same kind of difficulty in terms of a technical
 15 reject for this piece of paper or that, so did our
 16 other agents. Is that the answer to your question?

17 MR. MURRAY: That would be the answer to
 18 my question. I have no further questions.

19 MR. BROWN: I don't have any follow-up, so
 20 the deposition is concluded.

21 Thank you very much for your time,
 22 Mr. Shipp.

23 MR. MURRAY: Thanks again, Mr. Shipp.

24 THE WITNESS: You are welcome.
 25 (The deposition concluded at 2:40 p.m.)

15 (Pages 54 to 57)

23 me, not PSE. GE, which had taken over Frank
24 Scardino's company, who originally was given 516.
25 So, Mr. Okin was actually attempting to

16

1 transfer traffic to CT 516, which was held at that
2 point by GE Exchange, and the deal was so-called
3 brokered by Combined Companies.

4 Q. Are you done with your answer?

5 A. Yes.

6 Q. Leaving aside what happened with your --
7 we're not here to talk about what happened with
8 your plans and your traffic. Is it your
9 understanding that Mr. Okin had plans and that he
10 was attempting to transfer those plans ultimately
11 to--

12 A. PSE -- GE.

13 Q. To GE. And is it your understanding that
14 Mr. Okin submitted paperwork to AT&T requesting the
15 TSA of that traffic?

16 A. I don't remember exactly what happened. I
17 know Mr. Okin was having extreme difficulty with
18 AT&T. Again, Mr. Okin is a competitor of mine. I
19 don't run his business. What actually transpired as
20 far as why he had to delete the accounts and
21 attempt to resign them up, instead of just
22 transferring them over, as the tariff indicates, I
23 can't understand why AT&T did not allow him to
24 transfer assignments of accounts under TSA, as the
25 tariff allows.

17

1 Q. Have you ever seen any written documents
2 or any written transfer of service requests from
3 Mr. Okin to AT&T?

4 A. No. I have never seen any TSAs of Mr.
5 Okin.

6 Q. Now, is it your understanding that Mr.
7 Okin was attempting to transfer the plans
8 themselves to GE or just the traffic on the plans?

9 A. I believe Mr. Okin was attempting to

10 transfer the traffic on any of the plans that were
11 pre-June 17th, 1994, CSTP2, which would grandfather
12 him. Those plans cannot be subjected to shortfall
13 charges because they are pre-June 17th, 1994,
14 issued RVPP ID numbers.

15 I think you have the audiotape which
16 completely describes what a new plan is versus an
17 old plan, et cetera.

18 Q. Did Mr. Okin consult with you in
19 connection with his attempt to transfer the traffic
20 or the plans to GE?

21 A. I'm sure Mr. Okin called me several
22 times. I was by far the largest aggregator of
23 tollfree service in the country. My business was
24 probably 10 times that of Mr. Okin's. I had not
25 only Mr. Okin calling me on a daily basis, but I

1 had numerous aggregators all over the country
2 wanting to know what to do in different situations
3 because I had basically a very good knowledge of
4 AT&T's CSTP2.

5 Q. Other than what Mr. Okin may have told
6 you, do you have any other information suggesting
7 that Mr. Okin made a request to AT&T for transfer
8 of traffic?

9 A. Other than what Mr. Okin might have told
10 me, I would never have any privy to any information
11 regarding paperwork that was submitted from him
12 directly to AT&T, of course not.

13 Q. Did you and Mr. Okin discuss the fact
14 that at least some of his plans were post June
15 17th, 1994?

16 A. I don't know as far as what plans were,
17 what plans weren't, and I just told him basically
18 what the -- what the FCC tariff indicated and what
19 Mr. Fitzpatrick, who was the account manager, had
20 explained as to what the rules and regulations are
21 regarding when traffic can be transferred; and the
22 old plan, the old CSTP2 plan, cannot go into
23 shortfall, as long as it was restructured on a

24 timely basis, and Mr. Okin would have to manage his
25 own plans.

19

1 I don't know when he took out his plans.

2 I only know what I told him, what were the rules
3 regarding when certain plans were taken out.

4 Q. So, you don't know the start date of any
5 of Mr. Okin's plans?

6 A. Of course not.

7 Q. Do you know what Mr. Okin's commitment
8 level was in or about 1994?

9 A. A guesstimate only, only through
10 conversations about how much volume he might have.
11 What the actual commitments were, I would never
12 have any access to that kind of information.

13 Q. What's your estimate?

14 A. At this point -- at the time -- at the
15 time I could probably tell you exactly what it was
16 because I had received reports from the entire

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Sent: Thursday, February 23, 2006 5:52 PM
To: Scampato@aol.com
Cc: Roger S. Antao
Subject: PAGE 2 of the exhibit.

The attached document shows that AT&T was not allowing traffic only transfers but were allowing transfers of the entire plan. See the notation from AT&T's Joyce Suek. Additionally the question Judge Politan posed also confirms that AT&T was not allowing traffic only transfers.

800 Services Inc., was unlawfully denied a traffic only transfer as the DC Court 2005 decision stated that traffic only transfers are allowed under the AT&T tariff. 800 Services Inc.'s its first priority was to restructure its pre June 17th 1994 plans and transfer its traffic.

This is a new discovery issue.

**Transfer of Service
Agreement and Notification**

I, DARREN B. SWAIN, INC., hereby
(Former Customer)

request that AT&T transfer or assign service for Account

Number(s) **TRANSFER ALL BTN'S EXCEPT 181 ACCOUNT #

to WINBACK & CONSERVE PROGRAM, INC.
(Customer)

Former Customer understands and agrees that this transfer or assignment does not relieve or discharge it from remaining jointly and severally liable with New Customer for any obligations existing at the time of transfer or assignment. These obligations include: (1) all outstanding indebtedness for the account numbers specified above and (2) the unexpired portion of any applicable minimum payment period(s).

New Customer hereby assumes all obligations of Former Customer at the time of transfer or assignment. These obligations include: (1) all outstanding indebtedness for the service and (2) the unexpired portion of any applicable minimum payment period(s).

Services are not to be interrupted or relocated at the time transfer or assignment is made. This transfer or assignment will become effective on the later of JUNE 15, 1995
(Date)

or AT&T's agreement in writing of the transfer or assignment.

Nothing herein shall give any customer, assignee, or transferee any interest or proprietary right in any given AT&T service telephone number.

Darren B. Swain 6/15/95
Former Customer (Date)
Authorized Representative

President
Title

Alfred G. Chapp 6/15/95
New Customer (Date)
Authorized Representative

President
Title

**ASSUMPTION OF BTN'S FROM PLAN ID 3357
ONTO WINBACK & CONSERVE PROGRAM, INC. PLAN I.D. _____

One Stop Financial

55 Main Street, Little Falls, NJ 07424
Tel.: (800) 245-1826 Fax: (800) 338-0409

Date: 6/15/95

Page: 1 of 2

Facsimilie Cover Sheet

Attention: Jayne Suek

Phone #: _____

Fax#: _____

From: Al Inga

Comments: Please transfer all BIN's under
Darwin B. Swain Inc. to Al's plan, which
only has a 1000/no commitment, Al
not recall the plan id number

6/20/95 Al - Per our conversation yesterday
Monday 6/19; an original TSA is now
required for transfer activity. Additionally,
we no longer process partial TSA's,
the TSA must be for the whole plan.
J. Suek

From: EzyStudentFunds [ezystudentfunds@optonline.net]
Sent: Tuesday, February 14, 2006 12:06 PM
To: phillo@giantpackage.com; Roger S. Antao; Scampato@aol.com
Subject: Section 202 Discrimination Evidence...It is also Fraud upon the COurt.

See Exhibit F

This was a restructure that was done for Winback and Conserve Program in March of 1995 but was not done for 800 Services. Discrimination under Section 202 of the Act. New Discovery issue.

The same paper work was filled out the same way by 800 Services, Inc. in Exhibit G.

No shortfall charges were hit on the Winback plans in 1995.

Al

Lawrence S. Coven (L.S.C. 9572)
THE LAW OFFICES OF LAWRENCE S. COVEN
 314 U.S. Highway 22 West
 Suite E
 Green Brook, N.J. 08812
 732-424-1000
Attorneys for Plaintiff, 800 SERVICES, INC.

**UNITED STATES DISTRICT COURT
 DISTRICT OF NEW JERSEY**

800 SERVICES, INC.,
a New Jersey Corporation,

Plaintiff,

v.

AT&T CORP.,
a New York Corporation,

Defendant.

CIVIL ACTION NO. 98-1539 (NHP)

**PLAINTIFF'S INTERROGATORIES
 TO DEFENDANT**

TO: Frederick L. Whitmer, Esq.
 Pitney, Hardin, Kipp & Szuch
 P.O. Box 1945
 Morristown, N.J. 07962-1945

PLEASE TAKE NOTICE that the plaintiff, 800 SERVICES, INC., hereby demands of the defendant, AT&T CORP., certified answers to the following Interrogatories within the time prescribed by the Federal Rules of Civil Procedure.

Dated: November 3, 1998

JOHN J. MURRAY JR.
 314 U.S. Highway 22 West
 Suite E
 Green Brook, N.J. 08812
THE LAW OFFICES OF LAWRENCE S. COVEN
ATTORNEYS FOR PLAINTIFF,

800 SERVICES, INC.

CERTIFICATION OF SERVICE

I hereby certify that I served an Original and one copy of the enclosed Interrogatories upon defendant's attorney, via regular mail, on November 3, 1998.

Dated: November 3, 1998

JOHN J. MURRAY JR.
314 U.S. Highway 22 West
Suite E

Green Brook, N.J. 08812

THE LAW OFFICES OF LAWRENCE S. COVEN
ATTORNEYS FOR PLAINTIFF,
800 SERVICES, INC.

DEFINITIONS

The following definitions apply to these Interrogatories:

1. "Defendant," "you," "your" or "yours" means AT&T CORP, and each of its predecessors, successors, parents, subsidiaries, divisions, subdivisions, affiliates or other associated corporations and entities and all officers, directors, employees, servants, agents, representatives, attorneys, advisors, consultants, independent contractors, accountants, bankers or other persons who have acted, purported to act or are acting or purporting to act on its behalf.
2. "Person acting on behalf of defendant" means officers, directors, employees, servants, agents, representatives, attorneys, consultants, accountants, or any other persons acting or purporting to act on behalf of defendant.
3. "Person" means any natural person, corporation, partnership, limited liability company, sole proprietorship, business entity, joint venture, estate, trust receiver, syndicate, association, group, organization, federal, state or local government or governmental agency, office, bureau, department or entity, or any other entity, or any combination thereof.
4. "Communication" means any oral or written transfer of information, ideas, opinions or thoughts by any means at any time or place under any circumstances, including any transfer made in person, between two or more persons, meetings, conferences or by telephone or any other means.
5. "Document" is used in the broadest sense possible and means any written or graphic matter of whatever kind or nature, including contracts, correspondence, letters,

memoranda, plans, blueprints, surveys, analyses, studies, reports, permit applications, inspection reports, invoices, billings, notes, booklets, pamphlets, articles, bulletins, directives, reviews, publications, diaries, logs, tests, projections, checks, receipts, purchase orders, shipping orders, leases, agreements, messages, tapes, computer tapes, computer disks, computer cards, recordings, videotapes, films, microfilms, microfiche, electronic mail, drawings, accounts, ledgers, statements, financial data, or any other means of preserving thoughts or expressions, and means the original and subsequent draft, each nonidentical copy (whether non-identical due to alterations, attachments, blanks, comments, notes, underlining, highlighting, or otherwise) of any writing or record, however described, wherever the document is located, however produced or reproduced, whether draft or final version. A document with handwritten or typewritten notes, notations, comments, or editing marks, etc., is not, and shall not be deemed identical to one without such marks for purposes of these Interrogatories.

6. "Complaint" means the Complaint in Civil Action No. 98-1539(NHP) in the United States District Court, District of New Jersey.

7. "Insurance," "insurance policy" and "policy" means all insurance of any type including, but not limited to general liability insurance, bodily injury insurance, property insurance, commercial automobile insurance, environmental impairment liability insurance and pollution liability insurance, whether primary, excess or umbrella liability, and all insurance policies, cover notes, certificates and binders relating to such insurance, including all amendments, modifications and endorsements.

8. "Identify" or "identity," when used with reference to a person, or any request to state the identity of a person, means to state:

- (a) his/her full name and present home address (or, if present address is not known, the last known home address);
 - (b) his/her present (or if present is not known, his/her last known) job, occupation, position, rank, and/or professional affiliation;
 - (c) the name and address of his/her present employer (or if present is not known, the name and address of his/her last known employer); and
 - (d) the same information requested in (a) and (b) for the time of the acts or other matters to which the interrogatory is addressed.
9. "Identify" or "identity," when used with reference to a document, means to state:
- (a) its nature (e.g., letter, telegram, memorandum, chart, report, list, etc.), date on which it was created, and the identity of the author and addressees (if any);
 - (b) the identity of each person who signed the document and the identity of each person who participated in any phase of preparing the document;
 - (c) its title or heading;
 - (d) a general description of the subject matter of the document;
 - (e) its present (or if present is not known, the last known) location and custodian of the document;
 - (f) its number of pages; and

(g) if the document is to be produced pursuant to a demand to produce documents served in this litigation, the document production number which the document bears.

10. "Identify" of "identity," when used in reference to an oral communication, requires you to:

- (a) state whether there was any oral communications(s) bearing upon, discussing or pertaining to the facts or issues to the facts to which the Interrogatory in question is addressed;
- (b) set forth in detail;
 - (1) the content of each said oral communication;
 - (2) where and when each said oral communication occurred;
 - (3) the name and address of each person participating in each or any said oral communication;
 - (4) the name and address of each person present at each or any said oral communication;
 - (5) the nature, identity and location of each and every document which bears upon, discusses or pertains to each or any said oral communication and to attach a copy thereof.

11. "Relate" or "relating to" means concerning, consisting of, referring to, reflecting, evidencing, constituting or having a logical or factual connection with the matter discussed.

12. "Any" means "all" and vice versa.

13. "Investigation" means any fact-finding effort related to any claim, activity,

business or the actual or potential risk of exposure of any person or property including, but not limited to any survey, inspection, research or analysis of any kind whatsoever.

14. "Attach all relevant documents" requires you to:

- (a) state whether there is or was any documents which bear upon, discuss or pertain to the facts or issues to which the Interrogatory is addressed.
- (b) set forth in detail:
 - (1) a description of the nature (i.e. letter memorandum) and the exact contents of each said document;
 - (2) the name and address of the author, signer, recipient and address of each said document;
 - (3) where each said document is located;
 - (4) the date of each said document;
 - (5) the name and address of the person or other entity which has custody, control or possession of each or any said document;
 - (6) if a document or copy thereof is no longer in existence or is no longer in your custody, control or possession, the name and address of the person or other entity last having custody and/or possession of said document to the best of your knowledge and the reason for its no longer existing or being under your custody, control or possession, and,
- (c) attach a copy of each and every said document.

15. "Representative" means any officer, director, partner, joint venturer, agent, employee, attorney, independent contractor, servant or any other person presently or formerly

acting for or on behalf of the person referred to in the Interrogatory.

16. "State," "describe" or "set forth" means to answer the Interrogatory, identifying all person involved therein or having knowledge thereof, identifying any documents which form the basis of respondent's knowledge or belief, indicating what basis other than documents respondent relies upon, supplying all dates in chronological order and in all other fashion providing a full and complete statement of respondent's knowledge or belief with regard to the Interrogatory.

INSTRUCTIONS

1. Each Interrogatory shall be answered completely, separately and fully.
2. Each person consulted in answering any Interrogatory shall be identified by name and address in the body of the answer to the particular Interrogatory.
3. The words "and" and "or" shall be construed conjunctively or disjunctively as is necessary to make the Interrogatory inclusive rather than exclusive.
4. The past tense shall be construed to include the plural, and vice versa, to make the Interrogatory inclusive rather than exclusive.
5. The singular shall be construed to include the plural, and vice versa, to make the Interrogatory inclusive rather than exclusive.
6. If any requested information or any document required to be identified by an Interrogatory is objected to on the basis of privilege, attorney work product, or any other protection:
 - (a) State the precise nature of the privilege or any other

protection claimed;

- (b) State the basis for the privilege or any other protection claimed relative to the specific information contained in the document;
- (c) State all the facts contained within the document, deleting only opinions, theories, mental impressions and non-factual statements;
- (d) If an objection is asserted with respect to any information, identify each person who has knowledge of such information, or to whom such information has been communicated in any manner or fashion, at any time, whether or not privilege or any other protection is claimed with respect to such communication; and
- (e) If privilege or other protection is asserted as to any document, identify such document in accordance with the definition of "identity" as set forth in definition 8 through 10 above.

7. If an Interrogatory is not fully answered, please explain why in detail. The answer "not applicable" is not acceptable and will be deemed a denial of knowledge sufficient to answer the Interrogatory. If only a portion of a question is not answered, please explain why (a) the answer is complete and (b) the reason you refuse to supply a fully responsive answer.

8. All Interrogatories require an answer even if the question only seeks an affirmative response and your response is not affirmative. Thus, if any answer is left blank, it will be deemed "none."

9. THESE INTERROGATORIES ARE CONTINUOUS IN NATURE AND REQUIRE SUPPLEMENTAL ANSWERS OR AMENDMENTS.

INTERROGATORIES

1. If defendant is a corporation, state your full legal name, date of incorporation, state of incorporation and the name and address of each officer and director of defendant.
2. State whether any person acting on behalf of defendant ever had any meetings or communications, including informal conversations, with plaintiff with regard to facts in any way relating to the subject matter of this action. If so, state the date and time that each meeting, communication or conversation took place and the substance of each meeting,

communication or conversation.

3. Identify the name and address of all present and former employees of defendant, third parties or any persons acting on behalf of defendant who have knowledge of any relevant facts relating to this action, along with brief descriptions of the type of knowledge they possess in addition to a description of their role in the incident or incidents which form the basis of this lawsuit.

4. If you know or believe to be in existence, although not in your possession or control, any documents that in any way relate to the subject matter of this litigation, identify each such document, set forth the source of your information or belief regarding the existence of such document and identify the person or entity in whose possession or control such document is known or believed to be.

5. Identify all experts you expect to call at any trial on this matter as witnesses or whom you have consulted in preparation for any expert's testimony or for assistance in this action, setting forth their qualifications, their field of expertise and the substance of the facts and opinions to which the expert is expected to testify, describing in detail all materials and documents the expert reviewed or consulted in forming that opinion.
6. Was defendant ever charged with or convicted of a crime? If yes, set forth the nature of the charge and/or conviction, the date of the charge and/or conviction and the state or country prosecuting the charge and/or conviction.
7. Identify the name and address of every witness defendant will call to testify at trial and the subject matter of their testimony.
8. Identify the name and address and of all persons answering or assisting in the answering

of these Interrogatories. If any of these people are employees of defendant, please identify their job title.

9. Have you ever been investigated by any governmental entity or regulatory agency with respect to the nature of your business activities. If yes, please state the date, nature and outcome of said investigation, including the name of the investigator.
10. Identify all complaints, whether or not formally filed with any court, tribunal or government agency, lodged against defendant by any person, whether orally or in writing, from 1988 until the present in which a party alleged that defendant violated the Federal Communications Act of 1934, as amended 47 U.S.C. §§ 151, et seq. (1993). With respect to each complaint identified, provide the docket number of said complaint, the name of the complaining party, the place where the complaint was filed and a brief

description of the nature of the complaint.

11. Identify the name, address and account number of every customer obtained by plaintiff pursuant to the contract signed between plaintiff and defendant dated August 2, 1994, covering the time period from August 2, 1994 to August 2, 1997, also known as the "AT&T 800 Customer Specific Term Plan II (CSTP II)/Network Services Commitment Form."
12. In reference to Interrogatory # 11 (including but not limited to the contract mentioned), identify the name, address and account number of every customer of plaintiff contacted by defendant, or any representative or subsidiary of defendant, including Transtec, Inc., for the purposes of soliciting any type of telecommunication services. In addition, identify the name and address of the solicitor (if an employee of defendant, identify the

employee's name and address and the name and address of that employee's supervisor)
and the date of said solicitation.

13. Describe in detail the present and former business relationship between defendant and Transtec, Inc., including defendant's ownership interest in Transtec, Inc., the nature of all business contracts between defendant and Transtec, Inc., the nature of the type of business that Transtec, Inc., conducts and the address of Transtec, Inc.
14. In reference to Interrogatory # 11 (including but not limited to the contract mentioned), identify the name, address and account number of every customer of plaintiff that was not deleted from defendant's billing records after a request was made by plaintiff to delete such customer. In addition, please identify the date of said request and the name and

address of any employee of defendant, including that employee's supervisor, that was responsible for processing said request.

15. In reference to Interrogatory # 11 (including but not limited to the contract mentioned), identify the name, address and account number of every customer of plaintiff that was sent billing invoices for "shortfall" charges. In addition, identify the name and address of any employee of defendant, including that employee's supervisor, that was responsible for generating said invoice and the date said invoice was sent to any customer.

16. In reference to Interrogatory # 11 and Interrogatory #15 (including but not limited to the contract mentioned), identify the name, address and account number of every customer of plaintiff that verbally or orally contacted defendant to inquire about the "shortfall"

charges. In addition, identify the date of said contact and the name and address of any employee of defendant, including that employee's supervisor, who participated in said contact.

17. State the number of 800 telephone numbers available to plaintiff prior to August 2, 1994 and subsequent to August 2, 1994, indicating the available number by month through August 2, 1997. In addition, identify the name and address of any employee of defendant, including that employee's supervisor, that was responsible for deciding the availability of said numbers.

18. Identify the name, address and account number of any customer of defendant that was a

former customer of plaintiff, the date said customer contracted with defendant for telecommunication service and the means of solicitation utilized by defendant. In addition, identify the name and address of any employee of defendant that solicited said customer, including that employee's supervisor, and the date of solicitation.

19. In reference to Interrogatory # 11 and Interrogatory #15 (including but not limited to the contract mentioned), identify the date and manner (oral or verbal) in which defendant notified plaintiff that plaintiff was responsible for any "shortfall" charges concerning plaintiff's customers' accounts. In addition identify the name and address of any employee of defendant, including that employee's supervisor, whose responsibility it was to send said notification.

20. State defendant's reasons for not changing plaintiff's contract with defendant dated August 2, 1994 to Tariff 516 upon plaintiff's request.
21. In reference to Interrogatory # 11 (including but not limited to the contract mentioned), identify the name and address of any third party, representative or person acting on behalf of defendant (not an employee of defendant) that was provided with a list of the name, address and account number of plaintiff's customers.
22. Identify the knowledge possessed by each individual named in defendant's Rule 26(a) disclosure dated 9/15/98 as said knowledge relates to this action. In addition, identify the individual or individuals that directly supervised plaintiff's customer accounts.

23. Identify the amount of revenue shared between plaintiff and defendant pursuant to the contract dated August 2, 1994, covering the time period from August 2, 1994 to August 2, 1997, also known as the "AT&T 800 Customer Specific Term Plan II (CSTP II)/Network Services Commitment Form."
24. Since January 1, 1994, identify the name and address of every person that contracted with defendant pursuant to a "AT&T 800 Customer Specific Term Plan II (CSTP II)/Network Services Commitment Form."

25. Since January 1, 1994, identify the name and address of every person that contracted with defendant pursuant to a "AT&T 800 Customer Specific Term Plan II (CSTP II)/Network Services Commitment Form" and subsequently failed to meet any telephone volume commitment pursuant to the terms of said contract.

CERTIFICATION IN LIEU OF OATH OR AFFIDAVIT

I hereby certify that the copies of the documents and/or reports attached hereto are exact copies of the entire document and/or report and that the existence of other documents or reports, either written or oral, are unknown to me and if such information later becomes known and/or available to me, I shall promptly serve same on the propounding party.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated:

Title:

Lawrence S. Coven (L.S.C. 9572)
THE LAW OFFICES OF LAWRENCE S. COVEN
 314 U.S. Highway 22 West
 Suite E
 Green Brook, N.J. 08812
 732-424-1000
Attorneys for Plaintiff, 800 SERVICES, INC.

**UNITED STATES DISTRICT COURT
 DISTRICT OF NEW JERSEY**

800 SERVICES, INC.,
a New Jersey Corporation,

Plaintiff,

v.

AT&T CORP.,
a New York Corporation,

Defendant.

CIVIL ACTION NO. 98-1539 (NHP)

**PLAINTIFF'S DEMAND FOR
 PRODUCTION OF DOCUMENTS**

TO: Frederick L. Whitmer, Esq.
 Pitney, Hardin, Kipp & Szuch
 P.O. Box 1945
 Morristown, N.J. 07962-1945

PLEASE TAKE NOTICE that the plaintiff, 800 SERVICES, INC., hereby demands of the defendant, AT&T CORP., certified responses and attachment of documents pursuant to the following Demands within the time prescribed by the Federal Rules of Civil Procedure.

Dated: November 3, 1998

JOHN J. MURRAY JR.
 314 U.S. Highway 22 West
 Suite E
 Green Brook, N.J. 08812
THE LAW OFFICES OF LAWRENCE S. COVEN
ATTORNEYS FOR PLAINTIFF,

800 SERVICES, INC.

CERTIFICATION OF SERVICE

I hereby certify that I served an Original and one copy of the enclosed Demands upon
defendant's attorney, via regular mail, on November 3, 1998.

Dated: November 3, 1998

JOHN J. MURRAY JR.
314 U.S. Highway 22 West
Suite E

Green Brook, N.J. 08812

THE LAW OFFICES OF LAWRENCE S. COVEN
ATTORNEYS FOR PLAINTIFF,
800 SERVICES, INC.

DEFINITIONS

The following definitions apply to these Demands:

1. "Defendant," "you," "your" or "yours" means AT&T CORP., and each of its predecessors, successors, parents, subsidiaries, divisions, subdivisions, affiliates or other associated corporations and entities and all officers, directors, employees, servants, agents, representatives, attorneys, advisors, consultants, independent contractors, accountants, bankers or other persons who have acted, purported to act or are acting or purporting to act on its behalf.
2. "Person acting on behalf of defendant" means officers, directors, employees, servants, agents, representatives, attorneys, consultants, accountants, or any other persons acting or purporting to act on behalf of defendant.
3. "Person" means any natural person, corporation, partnership, limited liability company, sole proprietorship, business entity, joint venture, estate, trust receiver, syndicate, association, group, organization, federal, state or local government or governmental agency, office, bureau, department or entity, or any other entity, or any combination thereof.
4. "Communication" means any oral or written transfer of information, ideas, opinions or thoughts by any means at any time or place under any circumstances, including any transfer made in person, between two or more persons, meetings, conferences or by telephone or any other means.
5. "Document" is used in the broadest sense possible and means any written or graphic matter of whatever kind or nature, including contracts, correspondence, letters,

memoranda, plans, blueprints, surveys, analyses, studies, reports, permit applications, inspection reports, invoices, billings, notes, booklets, pamphlets, articles, bulletins, directives, reviews, publications, diaries, logs, tests, projections, checks, receipts, purchase orders, shipping orders, leases, agreements, messages, tapes, computer tapes, computer disks, computer cards, recordings, videotapes, films, microfilms, microfiche, electronic mail, drawings, accounts, ledgers, statements, financial data, or any other means of preserving thoughts or expressions, and means the original and subsequent draft, each nonidentical copy (whether non-identical due to alterations, attachments, blanks, comments, notes, underlining, highlighting, or otherwise) of any writing or record, however described, wherever the document is located, however produced or reproduced, whether draft or final version. A document with handwritten or typewritten notes, notations, comments, or editing marks, etc., is not, and shall not be deemed identical to one without such marks for purposes of these Demands.

6. "Complaint" means the Complaint in Civil Action No. 98-1539(NHP) in the United States District Court, District of New Jersey.

7. "Insurance," "insurance policy" and "policy" means all insurance of any type including, but not limited to general liability insurance, bodily injury insurance, property insurance, commercial automobile insurance, environmental impairment liability insurance and pollution liability insurance, whether primary, excess or umbrella liability, and all insurance policies, cover notes, certificates and binders relating to such insurance, including all amendments, modifications and endorsements.

8. "Identify" or "identity," when used with reference to a person, or any request to state the identity of a person, means to state:

- (a) his/her full name and present home address (or, if present address is not known, the last known home address);
 - (b) his/her present (or if present is not known, his/her last known) job, occupation, position, rank, and/or professional affiliation;
 - (c) the name and address of his/her present employer (or if present is not known, the name and address of his/her last known employer); and
 - (d) the same information requested in (a) and (b) for the time of the acts or other matters to which the interrogatory is addressed.
9. "Identify" or "identity," when used with reference to a document, means to state:
- (a) its nature (e.g., letter, telegram, memorandum, chart, report, list, etc.), date on which it was created, and the identity of the author and addressees (if any);
 - (b) the identity of each person who signed the document and the identity of each person who participated in any phase of preparing the document;
 - (c) its title or heading;
 - (d) a general description of the subject matter of the document;
 - (e) its present (or if present is not known, the last known) location and custodian of the document;
 - (f) its number of pages; and

10. "Identify" of "identity," when used in reference to an oral communication, requires you to:

(a) state whether there was any oral communications(s) bearing upon, discussing or pertaining to the facts or issues to the facts to which the Demand in question is addressed;

(b) set forth in detail;

(1) the content of each said oral communication;

(2) where and when each said oral communication occurred;

(3) the name and address of each person participating in each or any said oral communication;

(4) the name and address of each person present at each or any said oral communication;

(5) the nature, identity and location of each and every document which bears upon, discusses or pertains to each or any said oral communication and to attach a copy thereof.

11. "Relate" or "relating to" means concerning, consisting of, referring to, reflecting, evidencing, constituting or having a logical or factual connection with the matter discussed.

12. "Any" means "all" and vice versa.

13. "Investigation" means any fact-finding effort related to any claim, activity, business or the actual or potential risk of exposure of any person or property including, but not limited to any survey, inspection, research or analysis of any kind whatsoever.

14. "Attach all relevant documents" requires you to:

(a) state whether there is or was any documents which bear upon, discuss or pertain to the facts or issues to which the Demand is addressed.

(b) set forth in detail:

(1) a description of the nature (i.e. letter memorandum) and the exact contents of each said document;

(2) the name and address of the author, signer, recipient and address of each said document;

(3) where each said document is located;

(4) the date of each said document;

(5) the name and address of the person or other entity which has custody, control or possession of each or any said document;

(6) if a document or copy thereof is no longer in existence or is no longer in your custody, control or possession, the name and address of the person or other entity last having custody and/or possession of said document to the best of your knowledge and the reason for its no longer existing or being under your custody, control or possession, and,

(c) attach a copy of each and every said document.

15. "Representative" means any officer, director, partner, joint venturer, agent, employee, attorney, independent contractor, servant or any other person presently or formerly acting for or on behalf of the person referred to in the Demand.

16. "State," "describe" or "set forth" means to answer the Demand, identifying all person involved therein or having knowledge thereof, identifying any documents which form the

basis of respondent's knowledge or belief, indicating what basis other than documents respondent relies upon, supplying all dates in chronological order and in all other fashion providing a full and complete statement of respondent's knowledge or belief with regard to the Demand.

INSTRUCTIONS

1. Each Demand shall be answered completely, separately and fully.
2. Each person consulted in answering any Demand shall be identified by name and address in the body of the answer to the particular Demand.
3. The words "and" and "or" shall be construed conjunctively or disjunctively as is necessary to make the Demand inclusive rather than exclusive.
4. The past tense shall be construed to include the plural, and vice versa, to make the Demand inclusive rather than exclusive.
5. The singular shall be construed to include the plural, and vice versa, to make the Demand inclusive rather than exclusive.
6. If any requested information or any document required to be identified by an Demand is objected to on the basis of privilege, attorney work product, or any other protection:
 - (a) State the precise nature of the privilege or any other protection claimed;
 - (b) State the basis for the privilege or any other protection claimed relative to

the specific information contained in the document;

- (c) State all the facts contained within the document, deleting only opinions, theories, mental impressions and non-factual statements;
- (d) If an objection is asserted with respect to any information, identify each person who has knowledge of such information, or to whom such information has been communicated in any manner or fashion, at any time, whether or not privilege or any other protection is claimed with respect to such communication; and
- (e) If privilege or other protection is asserted as to any document, identify such document in accordance with the definition of "identity" as set forth in definition 8 through 10 above.

7. If an Demand is not fully answered, please explain why in detail. The answer "not applicable" is not acceptable and will be deemed a denial of the existence of said documents. If only a portion of a Demand is not answered, please explain why (a) the answer is complete and (b) the reason you refuse to supply a fully responsive answer.

8. All Demands require an answer even if the question only seeks an affirmative response and your response is not affirmative. Thus, if any answer is left blank, it will be deemed "none."

9. THESE DEMANDS ARE CONTINUOUS IN NATURE AND REQUIRE SUPPLEMENTAL RESPONSES OR AMENDMENTS.

DEMANDS

1. Any and all documents upon which defendant shall rely at trial.
2. Any and all documents, including exhibits thereto, referred to in defendant's pleadings, regardless of whether or not they are attached as exhibits to same.
3. Any and all documents dealing with or relating to any admission that defendant contends has, at any time, been made by any party to this action including, but not limited to, all documents dealing with or relating to when, how to whom, and by whom such admissions were made and the specific nature of said admissions.
4. Any and all documents dealing with or relating to any declaration against interest that defendant contends has, at any time, been made by any party to this action including, but not limited to, all documents dealing with or relating to when, how to whom, and by whom such declarations against interest were made and the specific nature of said admissions.
5. Any and all documents dealing with or relating to any expert witness defendant intends to call at trial, including but not limited to any expert report, supporting data, exhibits,

charts, summaries or documents that said expert will rely upon at trial.

6. Any and all resumes, curriculum vitae or documents concerning qualifications of any expert witness defendant intends to call at trial.

7. Any and all documents and/or communications which refer or relate to the terms and conditions of any agreement between the parties to this action.

8. Any and all documents and/or communications created by defendant or plaintiff that relate to this action.

9. Any and all agreements, contracts, employment contracts, independent contractor agreements, commission agreements, releases, licenses, sublicenses, assignments or similar documents entered into between the parties to this action. This Demand includes any and all book accounts, invoices, receipts, shipping documents and accounts and any similar documents which would indicate a business relationship between the parties to this action.

10. Any and all documents concerning, relating to, dealing with or touching upon any communications between the parties to this action.

11. Any and all documents concerning, relating to or touching upon any litigation in which defendant has ever been a party, including copies of pleadings.

12. Any and all personnel files, employee records or internal documents which indicate the names of the individuals with knowledge of facts relating this action.

13. Any and all documents which refer or relate to any money allegedly owed by one party to another party to this action.

14. Any and all documents which refer or relate to any transfer of money between the parties to this action.

15. Any and all documents which refer to any meeting or communications, including informal conversations, between any person acting on behalf of defendant and plaintiff with regard to facts in any way relating to the subject matter of this action.

16. Any and all documents prepared by any state/federal law enforcement agency, regulatory agency or government agency relating to any violation or investigation of any violation of any state or federal law alleged to have been committed by defendant.

17. Any and all photographs relating to this action.

18. Any and all documents in defendant's possession that were prepared by plaintiff.

19. Any and all recordings, videotapes, transcripts or similar documents relating to this action.

20. Any and all documents obtained by subpoena which relate to this action.

21. Any and all signed and/or unsigned statements made by any witness defendant intends to call at trial, any party to this action or any representative of any party to this action.

22. Any and all documents, including but not limited to checks, canceled checks, money orders, receipts, debits, credits, accounts or other similar documents, indicating any monetary payment from any party to this action to any other party to this action.

23. Any and all documents utilized by defendant in answering plaintiff's Interrogatories.

24. Any and all documents relating to any criminal charges filed against defendant.

25. Any and all documents relating to any criminal convictions of defendant.

26. Any and all documents relating to any investigation of defendant by any governmental entity or regulatory agency relating to the nature of defendant's business activities.

27. Any and all documents relating to any complaints, whether or not formally filed with any court, tribunal or government agency, lodged against defendant by any person, whether orally or in writing, from 1988 until the present in which a party alleged that defendant violated the Federal Communications Act of 1934, as amended 47 U.S.C. §§ 151, et seq. (1993).

28. Any and all documents relating to the name, address and account number of every customer obtained by plaintiff pursuant to the contract signed between plaintiff and defendant dated August 2, 1994, covering the time period from August 2, 1994 to August 2, 1997, also known as the "AT&T 800 Customer Specific Term Plan II (CSTP II)/Network Services Commitment Form."

29. Any and all documents relating to Transtec, Inc, including any documents indicating any type of business relationship between defendant and Transtec, Inc. and defendant's ownership interest in Transtec, Inc.

30. Any and all documents relating to every customer of plaintiff contacted by defendant, or any representative or subsidiary of defendant, including Transtec, Inc., for the purposes of soliciting any type of telecommunication services.

31. Any and all documents relating to any request made by plaintiff to defendant to delete any customer of plaintiff from defendant's billing records.

32. Any and all documents relating to any billing invoices sent by defendant to plaintiff's customers for "shortfall" charges.

33. Any and all documents relating to any verbal or oral communication originated by a customer of plaintiff to defendant concerning "shortfall" charges or in which such customer inquired about "shortfall" charges.

34. Any and all documents relating to the availability of 800 telephone numbers to plaintiff prior to August 2, 1994 and subsequent to August 2, 1994, indicating the available number by month through August 2, 1997.

35. Any and all documents relating to any customer of defendant that was a former customer of plaintiff.

36. Any and all documents relating to defendant's solicitation of any customer of plaintiff.

37. Any and all documents relating to defendant's notification to plaintiff that plaintiff was responsible for any "shortfall" charges concerning plaintiff's customers accounts.

38. Any and all documents relating to any third party, representative or person acting on behalf of defendant that was provided with a list of the name, address and account number of any of plaintiff's customers.

39. Any and all documents relating to the amount of revenue shared between plaintiff and defendant pursuant to the contract dated August 2, 1994, covering the time period from August 2, 1994 to August 2, 1997, also known as the "AT&T 800 Customer Specific Term Plan II (CSTP II)/Network Services Commitment Form."

40. Any and all documents relating to any person that contracted with defendant pursuant to a "AT&T 800 Customer Specific Term Plan II (CSTP II)/Network Services Commitment Form."

41. Any and all documents relating to any person that contracted with defendant pursuant to a "AT&T 800 Customer Specific Term Plan II (CSTP II)/Network Services

Commitment Form" and subsequently failed to meet any telephone volume commitment pursuant to the terms of said contract.

42. Any and all documents relating to any person that contracted with defendant pursuant to a "AT&T 800 Customer Specific Term Plan II (CSTP II)/Network Services Commitment Form" and requested a transfer to Contract Tariff 516.

43. Any and all documents relating to defendant's decision not to transfer plaintiff to Contract Tariff 516.

44. Any and all billing invoices sent by defendant to any customer of plaintiff or any billing invoices sent to defendant.

45. Any and all documents sent by defendant to any customer of plaintiff.

46. Any and all documents sent by any third party, representative or any person acting on behalf of defendant to any customer of plaintiff.

47. Any and all documents that embody, refer or relate to your total or partial corporate ownership of any other person.

48. Any and all documents that refer to plaintiff or any customer of plaintiff.

49. Any and all documents that refer to any customer of defendant concerning "shortfall" charges or in which such customer inquired about "shortfall" charges.

50. Any and all documents which in any way refer to defendant's efforts to solicit customers for telecommunication service.

51. Any and all documents sent by defendant to any person besides plaintiff which refer in any way to plaintiff.

52. Any and all documents sufficient to identify all billings (by month) for any

telecommunication services provided by defendant to plaintiff or any customer of plaintiff.

- 53. Any and all documents identifying the custodian of records of defendant.
- 54. Any and all documents not requested above that defendant will rely upon at trial.

CERTIFICATION IN LIEU OF OATH OR AFFIDAVIT

I hereby certify that the copies of the documents and/or reports attached hereto are exact copies of the entire document and/or report and that the existence of other documents or reports, either written or oral, are unknown to me and if such information later becomes known and/or available to me, I shall promptly serve same on the propounding party.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated:

Title:

THE LAW OFFICES OF
LAWRENCE S. COVENCOUNSELORS AT LAW
314 U.S. HIGHWAY 22 WEST
SUITE E
GREEN BROOK, NEW JERSEY 08812
(732) 424-1000
FACSIMILE (732) 424-1665Lawrence S. Coven ★

Janet B. Coven ★

OF COUNSEL

★ Member of the NJ and PA Bars

New York Office
575 Madison Avenue
Tenth Floor
New York, NY 10022
(212) 605-0422
FACSIMILE (212) 605-0427114 Main Street
S. Bound Brook, NJ 08880
(732) 469-3100
FACSIMILE (732) 469-3767John J. Murray Jr.
Richard A. WalshPlease Respond to:
Green Brook Office

January 13, 1999

Frederick L. Whitmer, Esq.
Pitney, Hardin, Kipp & Szuch
P.O. Box 1945
Morristown, N.J. 07962-1945
VIA REGULAR MAIL**RE: 800 Services, Inc. v. AT&T**
Case No. 98-1539(NHP)

Dear Mr. Whitmer:

Please note that Defendant's Answers to Plaintiff's Interrogatories are deficient with regard to the following:

1. Answer to Interrogatory # 1: Your objection is improper. The name and address of each officer and director of defendant is relevant to this action. These people formulate policy for defendant and manage the activities of defendant's business operations. Therefore, they may have knowledge of the events underlying this action. Please respond appropriately.
2. Answer to Interrogatory # 3: Your objection is improper. As for the persons identified in defendant's Rule 26 disclosure, defendant failed to provide brief descriptions of the type of knowledge the persons possess and their role in the incident or incidents which form the basis of this lawsuit. Please respond appropriately.
3. Answer to Interrogatory #4: Your objection is improper. Either defendant is aware of the

- existence of other documents or you are not. Please respond appropriately.
4. Answer to Interrogatory #8: Your objection is improper, since defendant failed to provide any Verification indicating the name of the person(s) answering the Interrogatories. Kindly forward a Verification or Certification page indicating the person responsible for answering the Interrogatories, including that person(s) job title.
 5. Answer to Interrogatory #10: Your objection is improper. This information is relevant to this action. If other complaints were filed against defendant which are similar (in terms of allegations) to those of plaintiff, it would indicate that defendant committed similar acts against other persons pursuant to defendant's policy or practice. Please respond appropriately.
 6. Answer to Interrogatory # 12: Your objection is improper. This information directly relates to plaintiff's allegation concerning defendant's improper solicitation of plaintiff's customers. Please respond appropriately.
 7. Answer to Interrogatory #13: Your objection is improper. This information directly relates to plaintiff's allegation that defendant utilized Transtec, Inc. and/or American Transtec, Inc. to improperly solicit plaintiff's customers. Please respond appropriately.
 8. Answer to Interrogatory #14: Your objection is improper. This information directly relates to plaintiff's allegation that defendant did not delete plaintiff's customers from billing records after a request was made by plaintiff to do so. Please respond appropriately.
 9. Answer to Interrogatory #15: Your objection is improper. This information directly relates to plaintiff's allegation that defendant billed plaintiff's customers for "shortfall" charges. Please respond appropriately.
 10. Answer to Interrogatory #16: Your objection is improper. This information directly relates to plaintiff's allegation that defendant slandered and libeled plaintiff when plaintiff's customers contacted defendant to inquire about "shortfall" charges. Please respond appropriately.
 11. Answer to Interrogatory #17: Your objection is improper. This information directly relates to plaintiff's allegation that it could not meet its volume commitment because 800 numbers were not made available to plaintiff. Please respond appropriately.
 12. Answer to Interrogatory #18: Your objection is improper. This information directly relates to plaintiff's allegation that defendant improperly solicited plaintiff's customers. Please respond appropriately.
 13. Answer to Interrogatory #19. Your objection is improper. This information directly

- relates to plaintiff's allegation that defendant did not notify plaintiff that plaintiff was responsible for "shortfall" charges, as required.
14. Answer to Interrogatory #21: Your objection is improper. This information directly relates to plaintiff's allegation that defendant solicited plaintiff's customers for telecommunication services.
 15. Answer to Interrogatory #22: Your objection is improper. Defendant did not provide information relating to knowledge possessed by each individual named in defendant's Rule 26 disclosure. Please respond appropriately.
 16. Answer to Interrogatory #23: Your objection is improper. This information directly relates to plaintiff's allegation that defendant failed to share revenue with plaintiff. Please respond appropriately.
 17. Answer to Interrogatory #24 and 25: Your objections are improper. This information directly relates to whether defendant maintained policies and practices which made it impossible for persons similar to plaintiff to fulfill their obligations pursuant to the CSTP II. Please respond appropriately.

If you have any questions in regards to this matter, please contact me.

Very truly yours,

John J. Murray Jr.

THE LAW OFFICES OF
LAWRENCE S. COVEN

COUNSELORS AT LAW
314 U.S. HIGHWAY 22 WEST
SUITE E
GREEN BROOK, NEW JERSEY 08812
(732) 424-1000
FACSIMILE (732) 424-1665

Lawrence S. Coven ★

Janet B. Coven ★

OF COUNSEL

★ Member of the NJ and PA Bars

New York Office
575 Madison Avenue
Tenth Floor
New York, NY 10022
(212) 605-0422
FACSIMILE (212) 605-0427

114 Main Street
S. Bound Brook, NJ 08880
(732) 469-3100
FACSIMILE (732) 469-3767

John J. Murray Jr.
Richard A. Walsh

Please Respond to:
Green Brook Office

January 14, 1999

Frederick L. Whitmer, Esq.
Pitney, Hardin, Kipp & Szuch
P.O. Box 1945
Morristown, N.J. 07962-1945
VIA REGULAR MAIL

RE: 800 Services, Inc. v. AT&T
Case No. 98-1539(NHP)

Dear Mr. Whitmer:

Please note that Defendant's Responses to Plaintiff's First Document Requests are deficient with regard to the following:

1. Response # 27: Your objection is improper. These documents are relevant to this action. If other complaints were filed against defendant which are similar (in terms of allegations) to those of plaintiff, it would indicate that defendant committed similar acts against other persons pursuant to defendant's policy or practice. Please respond appropriately.
2. Response # 29: Your objection is improper. These documents directly relate to plaintiff's allegation that defendant utilized Transtec, Inc. and/or American Transtec, Inc. to improperly solicit plaintiff's customers. Please respond appropriately.
3. Response # 30: Your objection is improper. These documents directly relate to plaintiff's allegation concerning defendant's improper solicitation of plaintiff's customers. Please

- respond appropriately.
4. Response # 35: Your objection is improper. These documents directly relate to plaintiff's allegation concerning defendant's improper solicitation of plaintiff's customers. Please respond appropriately.
 5. Response # 36: Your objection is improper. These documents directly relate to plaintiff's allegation concerning defendant's improper solicitation of plaintiff's customers. Please respond appropriately.
 6. Response # 40: Your objection is improper. These documents directly relate to whether defendant maintained policies and practices which made it impossible for persons similar to plaintiff to fulfill their obligations pursuant to the CSTP II. Please respond appropriately.
 7. Response #41: Your objection is improper. These documents directly relate to whether defendant maintained policies and practices which made it impossible for persons similar to plaintiff to fulfill their obligations pursuant to the CSTP II. Please respond appropriately.
 8. Response #42: Your objection is improper. These documents directly relate to whether defendant maintained policies and practices which denied transfers from CSTP II to Contract Tariff 516. Please respond appropriately.

In addition, Request # 49 is hereby amended as follows:

Any and all documents that refer to any customer of plaintiff concerning "shortfall" charges or in which such customer inquired about "shortfall" charges.

If you have any questions in regards to this matter, please contact me.

Very truly yours,

John J. Murray Jr.

THE LAW OFFICES OF
LAWRENCE S. COVEN
COUNSELORS AT LAW
314 U.S. HIGHWAY 22 WEST
SUITE E
GREEN BROOK, NEW JERSEY 08812
(732) 424-1000
FACSIMILE (732) 424-1665

Lawrence S. Coven ★

Janet B. Coven ★

OF COUNSEL

John J. Murray Jr.
Richard A. Walsh

March 22, 1999

Hon. Ronald J. Hedges, U.S.M.J.
Martin Luther King Jr. Federal
Building & Courthouse
Room 2042
50 Walnut St.
P.O. Box 999
Newark, N.J. 07101-0999
VIA REGULAR MAIL

RE: 800 Services, Inc. v. AT&T
Case No. 98-1539(NHP)

Dear Judge Hedges:

I write this letter in an effort to avoid needless motion practice and resolve defendant's failure to comply with certain discovery requests of plaintiff.

Defendant's initial discovery responses were served upon plaintiff on November 3, 1998. Defendant responded on or around December 11, 1998. Once I received responses, I followed up with a letter to defendant on January 14, 1999, outlining deficient responses. Defendant responded to this letter on or around March 4, 1999.

I still have not received proper responses to the following discovery requests:

Plaintiff's Interrogatory # 13, which reads as follows:

Describe in detail the present and former business relationship between defendant and Transtec, Inc., including defendant's ownership interest in Transtec, Inc., the nature of all business contracts between defendant and Transtec, Inc., the nature of the type of business that Transtec, Inc., conducts and the address of Transtec, Inc.

Defendant objected as follows:

"AT&T specifically incorporates herein its general Objection No. 10. AT&T further objects to this Interrogatory on the grounds that the question is improper in that it is overly broad, unduly burdensome, and seeks information that is not relevant to the issues in dispute in this action and is not reasonably calculated to lead to the discovery of admissible evidence."

The information requested in Interrogatory #13 is clearly relevant to this matter as it goes to the core of plaintiff's case. Plaintiff alleges that AT&T obtained plaintiff's customer list from plaintiff and used American Transtech, Inc. to solicit plaintiff's customers, enticing these customers with lower rates. When these customers switched from plaintiff to AT&T, plaintiff was unable to fulfill its volume commitment and was forced out of business.

Plaintiff's Document Demand #29, which reads as follows:

Any and all documents relating to Transtec, Inc, including any documents indicating any type of business relationship between defendant and Transtec, Inc. and defendant's ownership interest in Transtec, Inc.

Defendant objected as follows:

The request for all documents relating to AT&T's former "relationship" with Transtec is not relevant to any issue in this case. AT&T stands by its objections.

Once again, these documents are clearly relevant to this matter for the reasons described in the above paragraph.

Plaintiff's Interrogatory # 25, which reads as follows:

Since January 1, 1994, identify the name and address of every person that contracted with defendant pursuant to a "AT&T 800 Customer Specific Term Plan II (CSTP II)/Network Services Commitment Form" and subsequently failed to meet any telephone volume commitment pursuant to the terms of said contract.

Defendant objected as follows:

AT&T objects to this Interrogatory on the grounds that the question is improper in that it is overly broad, unduly burdensome, and seeks information that is not relevant to the issues in dispute in this action and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these or any other objections, AT&T responds that the answer to this Interrogatory, to the extent that it is available from

the books and records of AT&T, may be as easily derived or ascertained by Plaintiff as by AT&T from the business records which have been produced to 800 Services in AT&T's initial disclosures pursuant to F.R.C.P. 26(c).

Defendant has provided me with over one thousand documents. I have been unable to "easily derive or ascertain" this information from these documents. In order for defendant's objection to stand, the least defendant can do is provide me with the name or title of the documents that contain the requested information.

The information requested in Interrogatory #25 is relevant to this case. Plaintiff alleges that AT&T perpetrated a scheme upon plaintiff and other aggregators. Defendant would offer, and plaintiff would subscribe to CSTP II. Plaintiff would then obtain customers who purchased defendant's long distance service. Because defendant processed all customer billing, defendant would then have in its possession the name of each of these customers. Through the use of various deceptive practices, which plaintiff intended to utilize prior to plaintiff subscribing to CSTP II, defendant would lure away plaintiff's customers. As the amount of plaintiff's customers decreased, plaintiff would not be able to meet its volume commitment. Plaintiff would then be forced out of business and remain liable to defendant for the remaining volume commitment. On the other hand, defendant would have new customers and increased business, all due to the work, effort and money of plaintiff.

I look forward to your reply to this letter.

Very truly yours,

John J. Murray Jr.

cc: Richard Brown, Esq.

From: Mr. Inga [ajdmm@optonline.net]
Sent: Tuesday, February 07, 2006 2:57 PM
To: Phillip Okin
Cc: Scampato@aol.com; Roger S. Antao
Subject: The fact that AT&T would not comply is very helpful I would think.

The fact that AT&T would not comply is very helpful I would think.

Al

O.K. here goes it.

#4 Asks ATT for any documents/letters made by any party against ATT to be provided, ATT refuses to answer this question.

#8 ATT is asked to produce all documents created by defendant that relate to this action, ATT refuses to answer this question.

#9 ATT is asked to provide any and all agreements, contracts which indicate business relations between any and all parties, ATT refuses to answer this question, although we later find out that Shipp had indeed had a contract to settle with ATT, this settlement included a large payment to Shipp.

#22 ATT is asked to provide any and all documents, including but not limited to checks, canceled checks, money orders, receipts, debits, credits, accounts or other similar documents, indicating any monetary payment from any party to this action to any other party in this action. ATT compensated Shipp and never disclosed this to the court, he was a paid off witness.

#27 ATT is asked if there are any other complaints similar to mine filed with the court, ATT received numerous complaints from Shipp, these letters should have been produced to the court, but they never were. ATT did not answer this question at all....

#42 ATT is asked for any and all documents relating to any person that contracted with defendant pursuant to 800 services specific term plan/2 commitment form and requested transfer to contract tariff 516. ATT simply again refused to answer the question.

AL it appears that Lawrence Coven went back to the court a couple of times to get these questions answered, and each time ATT simply refuses to comply...
